A89-521-200

In the Supreme Court of the United States

OCTOBER TERM, 1920

No..... Original.

THE STATE OF TEXAS, COMPLAINANT,

vs.

THE INTERSTATE COMMERCE COMMISSION AND RAILROAD LABOR BOARD, DEFENDANTS.

MOTION TO FILE ORIGINAL BILL.

Now comes the State of Texas by its Attorney General, C. M. Cureton, and moves the court for leave to file the bill of complaint herewith exhibited, in a suit between the State of Texas and citizens of other States, and arising under the Constitution and laws of the United States, for the purpose of enjoining the defendants from enforcing within the State of Texas, by an abuse of power, without lawful and constitutional authority or by a wrongful and erroneous interpretation thereof, such titles and sections of an act of Congress, the short title of which is "The Transportation Act of 1920," as apply and are designated to give authority and effect to and as create the Railroad Labor Board, and which attempt to authorize each of the defendants to do and perform acts and to assume authority under said sections enumerated; and that the proper process may issue thereon, notifying the defendant of the filing of said bill and that they appear in answer thereto and defend the same.

THE STATE OF TEXAS.
By C. M. CURETON,
Attorney General, for the State of Texas.
BRUCE W. BRYANT,
EUGENE A. WILSON,
WALACE HAWKINS,
TOM L. BEAUCHAMP,
Assistant Attorneys General.
And JOHN E. BENTON,
Washington, D. C.
Solicitors for the State of Texas.

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IN EQUITY

STATE OF TEXAS, COMPLAINANT,

vs.

THE INTERSTATE COMMERCE COMMISSION AND RAILROAD LABOR BOARD, DEFENDANTS.

ORIGINAL BILL IN EQUITY.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of Texas, complainant, by C. M. Cureton, Attorney General thereof, brings this bill of complaint for itself and representatively on behalf of its citizens in their sovereignty against the defendants above named, and respectfully shows unto this Honorable Court:

I.

That the complainant, the State of Texas, is one of the States of the United States, and the defendants are administrative, governmental agencies of the United States described as follows, to-wit: The Interstate Commerce Commission is a corporate body having legal capacity to sue and be sued and has regulatory powers over common carriers in the United States engaged in interstate commerce, established and now existing under act of Congress, known as the "Interstate Commerce Act," said Commission being located at the seat of government of the United States in the City of Washington, District of Columbia, and whose chairman is Edgar E. Clarke, a citizen of the State of Iowa; that the Railroad Labor Board is a corporate body vested with administrative and regulatory governmental powers, having jurisdiction

over disputes arising between common carriers engaged in interstate commerce and their employes and subordinate employes, established and existing under act of Congress of the United States known as the Transportation Act of 1920, amending "An Act to Regulate Commerce," approved February 4, 1887, as amended, approved February 28, 1920, and said Railroad Labor Board, pursuant to the act creating and establishing such Board, has and maintains its principal office in the City of Chicago, in the State of Illinois, and that the chairman of said Board is R. M. Barton, a citizen of the State of Tennessee.

II.

This is a suit of a civil nature arising under the Constitution and laws of the United States against citizens of other States of the United States, who, as designated officials and administrative agencies of the Government of the United States, with their and each of their subordinates, agents and servants, are charged with the duty, in their several spheres of action, of enforcing a certain pretended act of Congress, and is for the purpose of enjoining them from enforcing such titles and sections of an act of Congress commonly called the "Transportation Act, 1920," as will be hereinafter named

III.

On information complainant alleges that the State of Texas has within its boundaries a territory of approximately 265,000 square miles, containing a population of more than 4,600,000 people, whose transportation needs are served by approximately 16,000 miles of constructed and operated railways; that the State of Texas is a large shipper of products over said railways in both intra and interstate commerce, and is likewise a large purchaser of supplies aggregating many millions of dollars each year shipped in both interstate and intrastate commerce over said railways; that it is also a large purchaser of transportation over said railways, in both interstate and intra-state commerce, on which its officers, agents, and employes, and members of its National Guard travel in the performance of their designated and lawful duties; that it is likewise the owner and operator of a line of railway running from Rusk, in Cherokee County, Texas, to Palestine, in Anderson County, Texas, a distance of 33.55 miles; said railroad is known as the "State Railroad," and is owned and operated, in its sovereign capacity, by the State of Texas; that while said rail-

road is a short line railway located wholly within the boundaries of the State, it is operated generally as a common carrier.

IV.

As heretofore alleged, the State of Texas has within its borders approximately 16,000 miles of constructed and operated railways. That said railways are owned and operated by approximately 125 different railway corporations, all of which, with one exception, are incorporated and chartered under the laws of Texas; that the exception is the Texas & Pacific Railway Company chartered under the laws of the United States. A list of said railways, together with the amount of mileage of each, and the valuation of each, as ascertained by the Railroad Commission of Texas, will be found in Exhibit No. 1 attached hereto and made a part of this petition for all purposes as though pleaded within the body hereof.

V.

That prior to the Act of 1845, admitting Texas into the Union, all the territory comprising the State of Texas existed as an independent nation of the world known as the Republic of Texas. That as such it had all power over its internal and domestic affairs, as well as its foreign affairs, with the right to pass and enforce any and all laws which an independent nation could enact and enforce for the welfare of its people. That it had a Constitution and code of laws, with a republican form of government, similar to the Constitution and laws of the United States. That on said date it was admitted into the Union as one of the States of the United States and ceased to exist as an independent nation of the world, but became, and has since continuously been, a State of the United States. That it was admitted into the Union on an equality with all other States of the Union in all respects whatsoever except that it retained the ownership of, and ever thereafter continued to own, all public lands within its borders. That upon admission to the Union it obtained the same rights and powers of government, legislative, executive, and judicial, over its internal affairs, as were retained by and reserved to the several States of the Union.

VI.

Complainant is advised, and therefore avers, that the Constitution of the United States does not delegate to the national government any power of police, nor power of legislation with respect to the internal affairs and intrastate commerce of the State of Texas, nor are said powers prohibited by the Constitution to the State of Texas, but are specially reserved to said State, or to the people, according to the determination of the people of said State.

VII.

Complainant is advised, and therefore avers, that in addition to the rights, powers and authority specially or by necessary implication reserved to or retained by the States, or the people, and not granted to the United States by the Constitution and various amendments thereto, there was reserved to the States respectively, or to the people all powers "not delegated to the United States by the Constitution, nor prohibited by it to the States." That among these powers, are the right to regulate intrastate commerce, and all rates, fares, wages, charges, and contracts relative thereto entered into or made effective within any State; the right to regulate private corporations, and combinations and restrictions in trade and commerce in intrastate commerce; and various powers, rights and privileges of the States and of the people not necessary to be enumerated at this time. That all of these powers, thus reserved to the several States and the people, were and are denied to the United States by the Constitution.

VIII.

Upon information complainant avers that acting within and under the Constitution of the United States, the State of Texas, from the time of its admission into the Union down to the present time, has, by its several Constitutions and various statutes, exercised the powers thus reserved to it, or left to the people the right to exercise the powers thus reserved to them. That its present Constitution was adopted by the people and became effective in 1876, and, with certain amendments thereafter made, became, was and is the fundamental law of the State, all provisions of which are valid under the Constitution of the United States. That under its said Constitution, Texas has, from time to time, enacted

statutes for carrying into effect the provisions thereof, and protecting the rights and liberties therein granted to or retained by the people, all of which are valid under the Constitution of the United States. That among the constitutional provisions referred to are those relating to equal rights, due process, special privileges and franchises, perpetuities and monopolies, private corporations, common carriers and railways.

Section 3, Article 1, of the Constitution of Texas declares that all men have equal rights and that no man or set of men is entitled to exclusive, separate public emoluments or privileges.

Section 17 of Article 1 provides that no irrevocable or uncontrollable grant of special privileges shall be made, but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

Section 19 of Article 1 declares that no citizen shall be deprived of life, liberty, property, privileges or immunities, except by due course of the law of the land.

Section 26 of Article 1 declares that perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed.

Section 22 of Article 4 makes it the duty of the Attorney General of the State to especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage, not authorized by law, and upon sufficient cause, to seek a judicial forfeiture of such charters unless otherwise especially directed by law.

Article 10 of the Constitution of Texas relates exclusively to railroad corporations. Section 1 of this article declares that any railroad corporation organized under the law for the purpose, shall have the right to construct and operate a railroad between any points in the State, and to connect at the State line with railroads of other States. It provides that every railroad shall have the right to intersect, connect with or cross any other railroad, and that railroad corporations shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulation as shall be prescribed by law.

By Section 2 of this article railroads theretofore constructed,

and which might thereafter be constructed in this State, are declared to be public highways, and railroad companies common carriers. It makes it the duty of the Legislature to pass laws to regulate freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by adequate penalties. It also provides that in the further accomplishment of these objects and purposes, the Legislature may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

Section 3 of this article requires every railroad corporation doing business in the State under the laws or authority thereof, to have and maintain a public office or place within the State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for inspection by the stockholders of such corporation books, in which shall be recorded the amount of capital stock prescribed, the names of the owners of the stock, and the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of such stock, and the date of the transfer, the amount of its assets and liabilities, and the names and place of residence of its officers. This section provides for an annual meeting, within the State, of the directors of every railroad company, and makes it the duty of certain officers of the corporation to make reports to certain State officers, the reports to include such matters relating to the railroads as may be prescribed by law. It is made the duty of the Legislature to pass laws enforcing the provisions of this section by suitable penalties.

Section 4 of this article fixes the status of the movable property of railroad companies, as personal property, and makes both real and personal property subject to execution, etc.

Section 5 of this article declares that no railroad corporation, or the lessees, purchasers or managers thereof, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line. It prohibits any officer of any such railroad corporation from acting as an officer of any other railroad corporation owning or having control of a parallel or competing line.

Section 6 of this article provides that no railroad company

organized under the laws of Texas shall consolidate by private or judicial sale, or otherwise, with any railroad company organized under the laws of any other State or of the United States.

Section 8 declares that no railroad corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Section 9 requires that railroads passing within a distance of three miles of any county seat shall pass through the same and establish and maintain a depot therein, etc.

Article 12 of the Constitution of Texas relates to private corporations. Section 1 prohibits the creation of private corporations except by general law. Section 2 provides that general laws shall be enacted providing for the creation of private corporations, which shall provide fully for the adequate protection of the public and of the individual stockholders. Section 3 declares the right to authorize and regulate freights, tolls, wharfage or fares, levied and collected, or proposed to be collected, or proposed to be levied and collected, by individuals, companies, or corporations for the use of highways, landings, wharves, bridges and ferries devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and dependent upon legislative authority.

Section 4 makes it the duty of the Legislature to provide a mode of procedure by the Attorney General and district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges as freight, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Section 5 provides that all laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

Section 6 provides that no corporation shall issue stock or bonds except for money paid, labor done or property actually received, and declares that all fictitious increase of stock or indebtedness shall be void.

Section 3 of Article 14 relates to land grants to the railways of the State. It declares that the Legislature shall have no power to grant State lands to any railway company except upon the fol-

lowing restrictions and conditions: First, there shall never be granted to any such corporation more than sixteen sections to the mile; second, that no land certificate shall be issued to such company until it shall have equipped, constructed, and in running order at least ten miles of road; and on the failure of such company to comply with the terms of its charter, or to alienate its lands at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all lands so granted are to be forfeited to the State and again become a part of the public domain. It is made the duty of the Legislature to pass general laws only to give effect to the provisions of this section.

Section 25 of Article 16 provides that all drawbacks and rebatement of freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain or other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, etc., not the true and absolute owner thereof, are forever prohibited, and it shall be the duty of the Legislature to pass effective laws, punishing all persons in this State who pay, receive or contract for or respecting the same.

Section 18 of Article 16 preserved all laws in effect in the State of Texas when the Constitution of 1876 was adopted, and which were not repugnant to the Constitution or that of the United States, until such laws should expire by their own limitation or be amended or repealed by the Legislature.

Copies of each of the foregoing sections of the Constitution of the State of Texas are shown in Exhibit 2, in the appendix to this bill of complaint, and are made a part hereof for all purposes to the same extent as if pleaded in full herein.

IX.

That under its Constitution, and particularly under the foregoing sections thereof, the State of Texas has enacted a full and complete code of laws relating to railroads and common carriers, corporations, trusts and monopolies.

Title 115 of the Revised Civil Statutes of Texas (1911) with amendments thereto relates to the subject of railroads. Chapter 1 of this title refers to the incorporation of railroad companies. It contains no limitations as to the time, place, necessity for, or circumstances under which a railroad may be constructed. Any

ten or more persons who are subscribers to the stock may form such a corporation by complying with the terms of the chapter. (R. S., Art. 6405.) No corporation, except one chartered under the laws of Texas is permitted to construct, build, operate, acquire, own or maintain any railway within the State. (R. S., Art. 6406.) It prescribes the method of incorporation, states when the existence of such a corporation begins, and limits the period of its existence to fifty years. Provision is made, however, for the renewal of corporations whose charters have expired. (R. S., Arts. 6407 to 6416.)

Chapter 2 authorizes amendments to railway corporation charters, and prescribes the manner thereof. (R. S., Arts. 6417 to 6422.)

Chapters 4, 5, 6 and 7 relate to the government of railway corporations by the stockholders, directors and officers. Each director is required to be a stockholder, and a majority must be residents of the State of Texas. (R. S., Art. 6439.) The corporate powers of the corporation are vested in the directors. (R. S., Art. 6445.) The various duties of the directors, and the rights and privileges of stockholders are defined. (R. S., Arts. 6438 to 6480.) The funds of the corporation can only be used for its corporate purposes. (R. S., Art. 6457.) Fully paid stock is non-assessable. (R. S., Art. 6458.) Authority is conferred upon stockholders to fix the amount of loans which railway corporations may negotiate, fix the rate of interest, and provide the security therefor. (R. S., Art. 6468.) Railroad stock and bonds cannot issue except for money, labor done or property actually received, and applied to corporate purposes. Shares of stock cannot issue except at par value. (R. S., Art. 6469.) Fictitious dividends, and other fictitious increase of capital stock or indebtedness is prohibited under penalty. (R. S., Arts. 6470, 6471.) The last four articles of the statute are copied in the appendix, page 85.

Chapter 8 relates to the right of way of railway corporations, the right thereto, the amount thereof, methods of acquirement, including the right of eminent domain, and generally all regulations pertinent to the subject (R. S., Arts. 6481 to 6534). Railroad corporations, in accordance with the constitutional provision, which is shown in the appendix, are authorized to construct and operate their lines between points within the State, and to connect at the State line with railroads of other States. (R. S., Art. 6481.) They are granted the right of way over all public lands,

together with the right to use any material found upon such lands necessary to the construction and operation of their roads. (R. S., Art. 6482, copied in the appendix, page 86.) The beds of all streams in Texas exceeding thirty feet in length are the property of the State, and were from the beginning reserved from survey. (Acts of Congress of the Republic of Texas, December 14, 1837; R. S. of Texas, 1876; Art. 3911; R. S., 1895, Art. 4147, and R. S., 1911, Art. 5338.) However, railroad corporations are given the right to construct their lines across, along or upon any stream, water course, highway, or canal of the State. (R. S., Art. 6485.) Railway corporations are authorized to intersect, join and unite their lines with any other railway line. (R. S., Art. 6499.) In the acquirement of necessary lands and material for use, railway corporations, if an agreement therefor cannot be made with the owner, are given full and complete power of eminent domain (R. S., Arts. 6502 to 6534).

Chapter 3 of this title relates to the public offices and books of railroad corporations. The general offices of such companies are required to be kept in the State (R. S., Art. 6423). The statute names or defines the officers who shall maintain their offices at the place designated for the general office of the company (R. S., Art. 6424). It provides what books shall be kept at the general offices, which books must be kept open for the inspection of stockholders, any officer or agent of the State charged with the duty of inspecting them, and for examination by the Legislature (R. S., Arts. 6429, 6431 and 6432). Suits are authorized and penalties provided to secure compliance with these articles of the statute (Arts. 6433, 6434). Railway corporations are prohibited from changing the location of their general offices, machine shops or roundhouses, except with the consent of the Railroad Commission of Texas (Art. 6435). These several articles enumerated as contained in Chapter 3, are copied in the appendix, page 81.

Chapter 9 defines various rights and duties of railway corporations. It grants to them the right to have a seal, the power of succession, and the right to sue and be sued, plead and be impleaded. (R. S., Arts. 6535, 6536.) They are given the power to purchase real and other property, or receive grants of the same, and to convey such property (R. S., Arts. 6537, 6538). Excess lands are required to be alienated within a limited time. (R. S., Art. 6539.) They are given the right to erect buildings, stations, fixtures and machinery, to receive and convey persons and prop-

erty by force of steam or other mechanical power, and, in substance, to do anything appropriate or necessary to carry out their corporate purposes. (R. S., Arts. 6541, 6542, 6543.) They are authorized to borrow money, execute mortgages, and issue and dispose of bonds, subject to the provisions of the statutes. (R. S., Arts. 6544 to 6547.) In certain instances, railroad corporations may abandon, change or relocate any portion of their lines of road, and in the exercise of such authority are granted the power of eminent domain, if necessary. (Acts Texas Legislature, 4th Called Session, Chap. 27, Vernon's Complete Texas Statutes, Arts. 6548a to 6548e inclusive. Copied in the appendix, page 86.)

Chapter 10 prescribes the duties and liabilities of railroad corporations. Part of these requirements are that trains shall be run for the transportation of passengers and freight, and that railway corporations shall receive, transport and deliver passengers and freight upon the payment of the legal fares, rates or charges. Such corporations are prohibited, under penalty, from refusing to do so, or from abandoning the operation of their trains, or from abandoning their roads or any part thereof, or failing to resume the operation of their lines when ordered to operate them by the State Railroad Commission. (R. S., Art. 6552, copied in the appendix, page 89.) This article, however, does not apply to roads to which the right of eminent domain is not granted by the laws of the State. (R. S., Art. 6552a, Vernon's Complete Texas Statutes.) This chapter contains various provisions regulating the operation of railways, many of which it does not appear necessary to specifically mention, though they are a portion of the code of laws of Texas governing railway corporations. The statute makes it unlawful for one railroad corporation to consolidate with another owning or having under its control a parallel or competing line; and prohibits absolutely the consolidation of any company organized under the laws of Texas with one organized under the laws of any other State or the United States, whether by private or judicial sale, or otherwise. (R. S., Arts. 6604, 6605, 6606, copied in the appendix, page 90.) Railroad corporations are required to receive freight and passengers from connecting lines upon terms defined by the statute. (R. S., Arts. 6608 to 6617.) Passenger fare is fixed by the statute at a maximum of 3 cents per mile, except where the passenger fails to purchase a ticket, when it is 4 cents. A minimum charge of 25 cents is required.

The maximum rate for children under ten years of age is 2 cents per mile. (R. S., Art. 6618, copied in the appendix, page 91.)

Chapter 11 relates to the collection of debts from railroad corporations, to wages of employes, and prohibits the abandonment of the main track of any railroad when once constructed and operated. Persons in the employ of railroad companies are entitled to thirty days notice before a reduction in wages may take effect. This and other provisions relative to the subject will be shown in the appendix. The statute provides that the property and franchises of a railroad corporation may be sold for its debts, but certain liabilities are required to be assumed by its purchasers or successors. (R. S., Arts. 6619 to 6625, shown in the appendix, page 91.)

Chapter 12 relates to the forfeiture of the charters of railway companies which do not comply therewith by constructing their lines, together with various relief measures enacted, from time to time, with respect thereto. (Vernon's Complete Texas Statutes, Arts. 6633 to 6636.)

Chapter 13 defines the authority and duties of railway ticket agents. (R. S., Arts. 6637 to 6639.)

Chapter 14 fixes the liability of railroad companies for injuries to their employes. (R. S., Arts. 6640 to 6652.)

Chapters 15 and 16 is the Railroad Commission Act of the State of Texas. It creates a Railroad Commission, defines its membership, and the various powers and duties of the Commission. In effect the Commission is authorized to adopt all necessary rates, charges and regulations to govern and regulate freight and passenger tariffs, correct abuses, and prevent unjust discrimination, and to enforce the penalties prescribed. The manner and method by which the Commission is to exercise the power conferred upon it is fully set forth in the statute. The power conferred upon the State Commission is in many respects similar to that conferred upon the Interstate Commerce Commission, and generally upon State railway and public utility commissions throughout the United States, and complainant deems it unnecessary to plead it in detail. So much of the act as we believe the court may find it necessary to examine or consider, we have copied in the appendix in Exhibit No. 3, page 95 hereof. Among other subjects placed under the jurisdiction of the Commission is the issuance of stocks and bonds by railroad corporations. The jurisdiction of the Commission over this subject is complete. The

statute, which was enacted in 1893, declares that the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stock and shares thereof, and the execution of all liens and mortgages, by railroad corporations in the State, are special privileges and franchises, the right of supervision, regulation, restriction, and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws. (R. S., Art. 6717.) Bonds cannot be issued in excess of the reasonable value of the property, except in certain emergencies. (R. S., Art. 6718.) The method and manner of issuing stock and bonds is fully set forth in the statutes copied in the appendix, page 113.

Complainant has not intended to refer to nor copy in the appendix the entire railway code of the State, but only so much thereof as will give the court a general conception of its extent, in so far as appears necessary for the proper presentation of the issues in this action.

In addition to the foregoing, Title 20, Articles 707 to 732, inclusive, of the Revised Civil Statutes of this State, defines the duties and liabilities of common carriers. Title 18, Chapters 14 to 21, of the Revised Penal Code of the State, creates and defines offenses relating to railways, their management, and operation and prescribes punishments therefor. The State has, also, a complete code of general corporation laws, many provisions of which apply to railways, union depots, and telegraph corporations. In addition to various penalties and remedies set forth in the statutes relating to railways, the general laws of the State provide for suits by information in the nature of a quo warranto against railway corporations.

By Title 130, Revised Civil Statutes, adopted in 1911, the State of Texas has created a code defining and punishing trusts, monopolies and combinations and conspiracies in restraint of trade. The provisions of these laws will be referred to in other paragraphs of this bill of complaint, and are shown in the appendix, page 120, as Exhibit No. 4, here referred to and made a part hereof to the same extent as if pleaded in full in the body hereof.

X.

Complainant alleges upon information, that in addition to the foregoing, prior to the adoption of the Constitution of the State in 1876, by special laws, and since, by a general law, copied in

the appendix, page 126, as Exhibit No. 5, the State of Texas has granted lands to various railroad corporations of the State, making in the aggregate approximately 24,151,713 acres. A list of the lands granted with the names of the roads to which granted is shown in the appendix, page 129, as Exhibit No. 6, and is referred to and made a part hereof for all purposes to the same extent as if set forth in the body of this pleading. Upon information and advice complainant avers that these lands were all granted upon condition, expressed or necessarily implied, or imposed by the provisions of Section 3, Article 14, and Section 8, Article 10, of the Constitution of Texas, that the railroad corporations receiving such lands would comply with the terms of their charters, which, complainant avers, comprehends all the laws of the State applicable thereto, including the rates, fares, charges, classifications, regulations and practices constitutionally prescribed by the laws of the State, or by the agencies of the State created for such purpose; that, as such, the railway corporations receiving such grants, and their successors in rights, franchises and liabilities became bound and obligated by contract, expressed or implied, to so be bound by the laws of Texas, and by the lawful rates, fares, charges, classifications, regulations and practices prescribed by the State, or by the agencies of the State for such purpose.

On information and advice complainant avers that several of the railroad corporations, now in existence within the State, either received grants of land as alleged, or are successors to the rights, privileges, franchises and liabilities of those which did receive grants, and are bound in the same manner and to the same extent as if such grants had been originally made to them.

XI.

That, as shown by the foregoing allegations, the State of Texas has fostered the construction and growth of the railroads within its borders by the gifts of public lands, and rights of way over all public lands, public roads and public streams.

Complainant has confined the corporate powers of railway corporations chartered by it within limits of the State with one exception, that of the Gulf, Colorado & Santa Fe Railway Company, which was chartered by special laws prior to the adoption of the Constitution in 1876, and which constructed and owns a small

amount of mileage in Oklahoma. Complainant has prohibited any corporation, except one chartered by the State or the United States, from owning or operating any railroad in the State of Texas; and no railroad corporation operates in the State of Texas under a charter from any other sovereignty than that of the State, except the Texas & Pacific Railway Company, which is chartered by the United States and operates a line of railway running from Texarkana, in Bowie County, approximately 862 miles to El Paso, in El Paso County.

XII.

Complainant upon information alleges that the railroad corporations chartered by it, and operating in Texas, have issued bonds under the laws of Texas against their properties in large sums and amounts, the aggregate of which is approximately $358,382,410; that the names of such corporations, the approximate mileage, and bonded indebtedness of each are shown in the appendix to this bill of complaint, marked Exhibit No. 7, and is referred to and made a part hereof for all purposes as though pleaded in the body of this complaint; that all such bonds so issued were issued and sold to the public generally upon the condition, expressed or necessarily implied from the laws under which issued, that such railroad corporations will abide by the laws of Texas, and will continue to operate their lines of railroad in accordance therewith, and be governed by the lawful rates, fares, charges, classifications, regulations and practices prescribed by the State, or by its agencies created for such purpose; and upon the condition, expressed or necessarily implied, that the State of Texas would require said corporations to be so bound.

That the State of Texas has not consented that such obligation to be so bound may be abrogated.

XIII.

Complainant is advised, and therefore avers, that each and all of the foregoing constitutional provisions and laws were passed for the benefit of the railroad corporations and the people; that the railroad companies of the State have, since their incorporation, or since the passage of the laws, respectively, enjoyed the franchises, rights, and privileges granted; and by reason thereof have exercised the business of common carriers for hire, and collected hundreds of millions of dollars in rates, fares and charges

for their services, and have issued stock, bonds and securities, and obtained large sums of money therefor; that the railroad corporations of the State were enabled so to do upon condition that they severally should accept as the law governing them the Constitution of the State of Texas, all the constitutional statutes of the State, and the lawful orders of its Railroad Commission. The Constitution and statutes of the State, and the orders of its Railroad Commission are also in like manner applicable to that portion of the line of the Texas & Pacific Railway Company operating within the State of Texas. But all of the railroad corporations of the State are particularly bound and obligated to observe the lawful passenger fares fixed by the statutes of the State of Texas from time to time, and lawful freight rates, charges and classifications prescribed by the Railroad Commission of the State of Texas, and all the lawful orders made by the Railroad Commission in carrying into effect the statutes of the State. That such obligation of the railroad corporations of the State, and of those operating railroads in the State, to abide by all the statutes of the State and all lawful orders of the Railroad Commission made pursuant thereto, became, has continued to be, and now is, a part of the charter contract of each of them, and cannot be abrogated without the consent of the State, or those authorized to act for the State of Texas.

That the State of Texas has not consented to the abrogation of such charter contracts.

XIV.

That the allegations heretofore and hereafter made to the effect that the charters of the railway corporations, and laws of the State, under all the facts shown, constitute contracts with the State, are not made for the purpose of invoking the jurisdiction of this court at this time for the determination of whether or not said facts do constitute contracts, or whether or not such contracts exist, for the reason that said allegations, if made for such purpose, would defeat the jurisdiction of the court, under the opinions of this Court in California vs. Southern Pacific Company, 157 U. S., 229, and Minnesota vs. Northern Securities Company, 184 U. S., 199; but said allegations are made as inducement for showing that the power and authority attempted to be conferred on the Interstate Commerce Commission to determine and fix rates, fares and charges for intrastate commerce within the State of Texas, to de-

termine when railway corporations within the State may cease operation, and take up and abandon their lines of railway, or construct additional lines of railway, or issue stocks, bonds and securities, or form pools and combinations, or consolidations, cannot constitutionally be conferred upon the Commission, for the reason that the authority of Texas railway corporations to comply therewith or accept the pretended benefits thereof, present justiciable questions, power to determine which cannot be conferred upon the Interstate Commerce Commission; and that the provisions of the Transportation Act of 1920, purporting to confer such authority on the Commission, violates the judiciary articles of the Constitution, and the due process clause of the Fifth Amendment to the Constitution.

XV.

Upon advice complainant avers the State of Texas is within all the protective clauses of the Constitution of the United States, and has reserved to it all legislative, executive and judicial powers which were respectively reserved to the States at the time of the formation of the government of the United States and the adoption of its Constitution.

That among other rights so reserved to the several States of the Union, and to the State of Texas, was that permitting them to create and control private corporations, and particularly private corporations engaged in the business of common carriers, the property of which lies wholly within the State. That the government of the United States and the Congress, which is its agency for legislative matters, and the Interstate Commerce Commission, a legislative and administrative agency created by the Congress of the United States, have no judicial authority authorizing them to determine any justiciable question where the rights of the State are involved; that justiciable controversies between the State of Texas and a sovereign State or the United States can only be determined under the Constitution of the United States, particularly under Article 3, Section 2, and the Eleventh Amendment to the Constitution of the United States, in the Supreme Court of the United States; and cannot be determined before any other court, nor before any legislative body or before Congress, nor before any legislative or administrative board or commission, nor before the Interstate Commerce Commission of the United States; that no citizen of the State of Texas, no citizen of any other State,

and no corporation of any kind or character can bring an action against the State of Texas, or against those lawfully acting for it as public officers, in any court, nor before the Interstate Commerce Commission of the United States, without the consent of the State of Texas; and that such consent has not been granted by the State of Texas.

Notwithstanding the aforesaid constitutional provisions, the Interstate Commerce Commission Act as amended by Section 402 of the Transportation Act of 1920, was passed, as complainant is advised, in violation thereof. Subdivisions 18, 19, 20, 21 and 22 of this section are copied in full in the appendix to this bill of complaint, page 134, marked Exhibit No. 8, and is herein referred to and made a part hereof for all purposes as though set forth at length in this complaint.

These subdivisions of this section prohibit any carrier from making an extension of its line of railroad, from constructing a new line of railroad, or acquiring or operating any line of railroad or extension thereof, or engaging in transportation over or by means of any additional or extended line of railroad, until the carrier shall have first obtained from the Interstate Commerce Commission a certificate that the present or future public convenience and necessity require, or will require the construction or operation of such additional or extended line of railroad; carriers by railroad are likewise prohibited from abandoning all or any portion of a line of railroad, or the operation thereof, until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. The applications for issuance of such certificates are to be under such rules and regulations as to hearings and other matters as the Commission may prescribe. Upon receipt of an application for such certificate, the Commission is required to give notices thereof, and file a copy with the Governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed shall be abandoned.

The right of being heard is given by the act in the same manner that hearings are provided for upon complaints or for the issuance of securities. The Commission is given power to issue such certificates as are prayed for, or to refuse, or to issue for a portion of a line of railroad or extension thereof, etc. The act declares, "from and after issuance of such certificate, and not be-

fore, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained or attached to the issuance of such certificate and proceed with the construction, operation or abandonment covered thereby."

As heretofore shown, the State has a complete system of laws for chartering, regulating, and controlling railroad corporations. These laws prohibit such corporations from abandoning the operation of their trains, and from taking up and removing their main tracks when once constructed and operated; except, as under actual practice, the Legislature grants consent, or except under conditions named in the statutes, the Railroad Commission of Texas consents thereto.

That the substance and effect of these paragraphs of the Transportation Act is to authorize a carrier to bring an action before the Interstate Commerce Commission against the State and all other interested parties, for the purpose of obtaining a decree authorizing the complaining carrier to abandon all or any portion of its line of railroad, or the operation thereof; that said act in effect provides for the service of a subpoena or notice on the public and on the State involved by delivery of a copy thereof to the Governor of the State, with the right of such State to be heard; that said act purports to give the Interstate Commerce Commission the power to hear such application, the pleadings and evidence of the parties, including that of the State, and to issue a decree granting to the complaining carrier the right to abandon all or any portion of its lines of railroad or the operation thereof. That said act purports to confer authority upon the Interstate Commerce Commission to grant such certificate of abandonment, and the railroad company to carry into effect the terms of the same, without securing the approval of the State or any of its agencies or authorities. That the legal effect of said statute is to authorize the Interstate Commerce Commission to adjudicate:

(a) That such complaining railroad has complied completely as to time and effect with its charter contract with the State which chartered same.

(b) Or that the State has violated the terms of its charter contract in such manner and form and under such circumstances as would authorize the carrier to no longer abide by and within the same.

(c) Or that the financial condition of the road is such, and all the facts and circumstances which surround it are such that it

is not able longer to comply, and ought not in law be required to comply, with its charter contract with the State and the laws and regulations governing its operation.

(d) Or that to further comply, with its charter contract with the State and abide by the laws made for its regulation, would be to take the property of such carrier without due process of law.

(e) Or that for the carrier to longer comply with such charter contract and the laws governing its existence and operation would be confiscatory and unreasonable.

(f) Or that for the carrier to longer abide by its charter contract and the laws of the State governing its existence constitutes a burden on interstate commerce.

(g) Or that other facts exist which authorize the corporation to abandon and take up its line of railroad or to abandon the operation of the same.

That each and all of the issues hereinabove suggested, and which may be determined by the Interstate Commerce Commission, and all such issues which it is contemplated may be determined by the Interstate Commerce Commission, whether here enumerated or not, are each and all justiciable issues between the State of Texas and the complaining carrier, or present questions for determination by the legislative department of the State.

Upon advice complainant alleges that, notwithstanding these averments, the Transportation Act of 1920, in the sections heretofore referred to, pretends to confer authority upon the railway corporations of Texas to cease the operation of their lines, and to take up and remove their main line tracks without the consent of the Legislature of the State of Texas, or the Railroad Commission of the State of Texas, and in violation of the Constitution and laws of Texas; that said sections of the Transportation Act, therefore, as to railroad corporations created by the State of Texas, are unconstitutional and void because they are violative of the Constitution of the United States, and particularly of the following provisions, towit:

(h) They violate the Tenth Amendment to the Constitution reserving to the States and the people all power not granted to the United States nor prohibited to the States.

(i) They violate subdivision 3, Section 8, Article 1, of the Constitution limiting the authority of Congress to the regulation of interstate and foreign commerce.

(j) They violate the Eleventh Amendment to the Constitution prohibiting suits against the State.

(k) Said sections violate Sections 1 and 2 of Article 3 of the Constitution conferring exclusive jurisdiction over justiciable controversies upon the Supreme Court and inferior courts of the United States.

(l) That said sections violate the Fifth Amendment to the Constitution which prohibits the taking of property without due process of law.

That said sections of the Transportation Act of 1920, in so far as the same provide that railroads cannot be constructed, nor extensions made of existing roads, without the consent of the Interstate Commerce Commission as provided for in said sections are likewise unconstitutional and void because violative of each and all of the foregoing provisions of the Constitution of the United States; and particularly for the reason that such power and authority is not conferred upon the Congress, nor upon the Interstate Commerce Commission, by subdivision 3, Section 8, Aricle 1, of the Constitution of the United States, giving Congress the power to regulate interstate commerce; and particularly for the reason that the Tenth Amendment to the Constitution of the United States reserves to the people the power and authority to engage in lawful occupations, and of the Fifth Amendment to the Constitution, which prescribes that one may not be deprived of liberty or property without due process.

XVI.

That, as heretofore alleged, Section 5 of Article 10 of the Constitution of Texas prohibits the consolidation of the stock, property or franchises of a railroad corporation with the stock, property or franchises of any parallel or competing line, regardless of the manner of such consolidation; that Section 6, Article 10, Constitution of the State of Texas prohibits the consolidation of any railroad company organized under the laws of Texas by private or judicial sale, or otherwise, with any railroad company organized under the laws of any other State or of the United States; that these constitutional provisions have been carried into effect by the various statutes of the State heretofore referred to in this pleading, and which are set out in full in the several exhibits in the appendix to this bill of complaint; that these constitutional

provisions and statutes thereunder were all passed by virtue of the power reserved to the State of Texas by the Tenth Amendment to the Constitution of the United States; that the statutes prohibiting the consolidations referred to are substantially the re-enactment of the constitutional provisions, with penalties and remedies for violations thereof, added thereto.

That among the powers reserved to the State was and is the power to pass and enforce anti-trust laws, and laws prohibiting monopolies, combinations and conspiracies in restraint of trade. That among the provisions of its Constitution adopted in 1876, and now and always hitherto in effect, is Section 26, Article 1, of the Constitution of the State of Texas aforesaid, which declares that perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed; that said provision inhibits any combination or contract, the tendency of which is to prevent competition in its broad and general sense. It applies, among other subjects, to the business of common carriers and the methods, manner and purposes of their operations. That in conformity with this and other provisions of the Constitution, and the general reserved power of the States to pass laws for the protection of the people, the State of Texas has passed and has now in effect a complete code of laws defining, prohibiting and punishing monopolies, trusts and conspiracies against trade, which are shown in the Revised Civil Statutes of Texas of 1911 in Articles 7796 to 7818, inclusive, and copied in Exhibit No. 4, page 120 in the appendix. That said code of laws, among other things, declares that a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons for various purposes, and among others, to create, or carry out, restrictions in trade or commerce, or aids to commerce, or transportation; or to carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State; or to fix, maintain, increase or regulate the price of merchandise, produce or commodities, or prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities; or to prevent or lessen competition, or aids to competition, or in the transportation of any product for market or to fix or maintain any standard or figure whereby the price of any article or commodity or merchandise, produce or commerce or the cost of transportation shall be in any manner affected, controlled or established; or to make, enter into, main-

tain, execute or carry out any contract, obligation or agreement by which the parties thereto bind themselves in any manner to fix the charge for transportation, or by which they will maintain the cost of transportation or preclude a free and unrestricted competition among themselves or others in the transportation of any article or commodity or in the business of transportation; or make any agreement relative to transportation whereby the market price of any article or commodity may be in any manner affected.

That the word "monopoly" is defined by the Texas statutes referred to as being, among other things, a combination or consolidation of two or more corporations whereby the direction of the affairs of such corporations are in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in this chapter of the Texas statutes. That said statutes also define conspiracies against trade, and contain other provisions, which we will not undertake to state in detail, but will refer the court to all the articles cited for a correct statement as to the laws of Texas relative to this subject.

That in addition to the powers reserved to the State of Texas by the Tenth Amendment to the Constitution of the United States, to protect its people against consolidation of railway corporations, and against trusts, monopolies, and conspiracies in restraint of trade, there was and is reserved by the Tenth Amendment, to the people, the primary and fundamental right to have their business, and the business of the country generally, and particularly the business of common carriers, conducted in a manner free from trusts, monopolies, and combinations and conspiracies in restraint of trade, and under the free and untrammeled right that the business of common carriers shall be entered into and conducted upon a competitive basis; that, notwithstanding the aforesaid rights, guaranteed to the State of Texas and to the people, and notwithstanding the valid provisions of the Constitution and laws of Texas, there was enacted the said Transportation Act of 1920, particularly Section 407 thereof, violative of the same, and in violation of the Constitution of the United States in the respects hereafter noted.

Section 407 of the Transportation Act of 1920, amends the first paragraph of Section 5 of the Interstate Commerce Act. This section (407) is copied in full in the appendix, page 136, is marked Exhibit No. 9, and made a part hereof for all purposes to

the same extent as if set forth in the body of this petition. Among other things, this section makes it unlawful for any carrier subject to the act, except upon specific approval of the Interstate Commerce Commission, to enter into any contract, agreement, or combination with any other carrier for the pooling of freights of competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads. It is provided, however, that when the Commission is of opinion, after hearing upon application of any carrier or upon its own initiative, that the division of traffic or earnings "will be in the interest of better service to the public or economy in operation, and will not unduly restrain competition," the Commission shall have authority to approve or authorize, if consented to by all carriers involved, such division of traffic or earnings under such rule and regulation, etc., as the Commission may find to be just and reasonable. The Commission is also authorized, after hearing, upon application of any carrier, or carriers, to permit one of such carriers to obtain control of any other carrier or carriers by lease, or by purchase of stock, where the Commission is of the opinion that such action will be in the interest of the public.

Subdivision 4 of this section makes it the duty of the Interstate Commerce Commission, as soon as practicable, to prepare and adopt a plan for the consolidation of the railroad properties of the continental United States into a limited number of systems. Certain limitations and requirements relative to these consolidations are set forth.

Subdivision 5 of the section makes it the duty of the Commission, when it has agreed upon a tentative plan of consolidation, to give the same due publicity, and upon reasonable notice, including notices to the Governors of each State, to hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings it is made the duty of the Commission to adopt a plan for such consolidation and publish the same. The act requires that the consolidation made by the carriers, under the act, shall be in harmony with the aforesaid plan of the Commission.

Subdivision 6 of this section makes it lawful for two or more carriers by railroad to consolidate their properties, or any part thereof, into one corporation for the ownership, management and operation of the properties theretofore in separate ownership, man-

agement and operation. The conditions specified for such consolidations by carriers are set forth in this subdivision of the section. Paragraph (c) of this subdivision of the section prescribes that when the carriers propose a consolidation, they shall present their application therefor to the Interstate Commerce Commission, and thereupon the Commission is required to notify the Governor of each State in which any part of the property sought to be consolidated is situated, the notice to give the time and place for public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation, and that the conditions specified have been or will be fulfilled, then the Commission may enter an order approving and authorizing such consolidation; and thereupon such consolidation may be effected in accordance with the order, if the carriers involved assent thereto, "the law of any State, or the decision or order of any State authority, to the contrary notwithstanding."

Subdivision 8 of this section (407) declares that the carriers affected by any order made under the provisions of this section, and any corporation organized to effect a consolidation, approved and authorized in such order, shall be and are relieved from the operation of the anti-trust laws of the United States, and from all other restraint or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the provisions of this section.

Complainant upon advice avers that the aforesaid provisions of the Transportation Act are in violation of the following provisions of the Constitution of the United States:

(a) Of the Tenth Amendment to the Constitution of the United States reserving to the State of Texas the right to regulate its own intrastate commerce, the right to prohibit trusts, combinations and conspiracies in restraint of trade, the right to determine for itself through its legislative department as to whether or not the pooling permitted by the aforesaid sections of the Transportation Act will "unduly restrain competition," and whether or not the acquirement or control or consolidation of common carriers will be "in the public interest," and the right to determine whether or not the railway corporations operating within its borders should be consolidated into a limited number of systems; and are further violative of the Tenth Amendment in that it deprives the people of the fundamental right, guaranteed to them

by said amendment, that the business of common carriers shall be conducted upon a competitive basis, and that there shall be no pools, combinations or consolidations between such carriers.

(b) That said provisions of the Transportation Act named above are violative of subdivision 3, Section 8, Article 1 of the Constitution of the United States which limits the power of Congress to the regulation of interstate commerce, and has the necessary effect of prohibiting Congress from regulating intrastate commerce; and that the authorization of pools, combinations, and consolidations as provided for in said sections quoted is not the regulation of interstate commerce.

(c) That said sections of the Transportation Act violate Sections 1 and 2 of Article 3 of the Constitution of the United States conferring judicial power exclusively upon the Supreme Court and inferior courts of the United States, and denying such power to the legislative department of the government, or to administrative agencies created by it; that said sections of the Transportation Act, in substance and effect, authorize a hearing before the Interstate Commerce Commission, upon notice to the Governor of the State, for the purpose of determining whether or not the consolidations prescribed by this pretended law shall be consummated. That such, in effect, is the determination of a justiciable controversy in which the State has an interest; and said pretended law purports to confer upon the Interstate Commerce Commission power and authority to determine the issues, and to bind the State by its orders and decrees.

(d) That said sections of the Transportation Act are further violative of the Eleventh Amendment, and Article 3 of the Constitution of the United States in that they authorize a judicial determination of justiciable questions by actions against the State brought in a tribunal other than the Supreme Court of the United States, and by parties other than States or the United States.

(e) That said sections of the Transportation Act, and particularly the first paragraph, designated as Section 5, paragraph 1, in that it leaves to the Interstate Commerce Commission, an administrative or executive board, created by Congress, to determine when and what will constitute an undue restraint of competition without defining undue restraint of competition, violates Section 1 of Article 1 of the Constitution of the United States, and subdivision 19 of Section 3, Article 1, of the Constitution, which confer legislative power exclusively upon Congress, and deny such

power and authority to the executive department of the government. Said sections of the Transportation Act further violate the last named provisions of the Constitution of the United States in that they attempt to confer legislative authority upon the Interstate Commerce Commission to determine whether or not the transportation system of the United States, and of the State of Texas, shall be conducted by the consolidation of existing railways into a limited number of systems instead of the present plan by which the transportation of the country is conducted; and to determine by the exercise of legislative authority the number and location of such systems, and whether or not the public interests will be promoted by such consolidations. That said sections of the Transportation Act are further violative of these last named provisions of the Constitution in that they confer legislative authority upon an executive board to determine whether or not the anti-trust laws of the United States, and the various laws of the States of the United States containing restraints and prohibitions against consolidations, monopolies, combinations and conspiracies in restraint of trade, shall continue to be effective against and apply to railroad corporations; and in that these sections purport to confer authority upon said executive board to suspend such laws of the United States and of the States as are operative against railroad corporations or common carriers.

(f) That said sections of the Transportation Act in providing for a determination of the rights of the State, as therein specified, before the Interstate Commerce Commission, violate the Seventh Amendment to the Constitution of the United States, which guarantees the right of trial by jury.

(g) Said sections of the Transportation Act likewise violate the Fifth Amendment to the Constitution of the United States which declares that liberty or property shall not be taken without due process, and that private property shall not be taken for a public use without just compensation.

XVII.

That, as heretofore alleged, the State of Texas, under the power reserved to it by the Tenth Amendment to the Constitution, and under the power to regulate its intrastate commerce, has passed and made effective a code of laws governing the issuance of stock, bonds and securities by railroad corporations; that notwithstand-

ing said fact, and notwithstanding such power and authority is reserved exclusively to the States, the Transportation Act of 1920, in Section 439 thereof, contains a pretended law in substance as follows:

The Transportation Act of 1920 amends the Interstate Commerce Commission Act by inserting between Sections 20 and 21 thereof a new section to be designated as Section 20a. This amendment is found in Section 439 of the Transportation Act of 1920. Said section is copied in the appendix, page 139, marked Exhibit No. 10, and made a part hereof to the same extent as if pleaded in full herein.

Among other provisions, this amendment provides that it shall be unlawful for any carrier to issue any shares of capital stock or any bond or other evidences of interest in or indebtedness of the carrier, or assume any obligation of liability as lessor, lessee, a guarantor, endorser, surety or otherwise in any respect as the surety of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier and after investigation by the Commission, the Commission authorizes such issue or assumption. The Commission is given the authority to make such order if it finds that such issue or assumption is for some lawful object within the corporate purpose of the carrier and compatible with the public interest, and that same is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public, and which will not impair its ability to perform that service; and that same is reasonable, necessary, and appropriate for such purpose.

The Commission is given power to grant or deny the application, or grant it in part or deny it in part, etc. The act prescribes the substance of the forms of all such applications. When the Commission receives an application under this section, it is required to give notice to, and file a copy of the application, with the Governor of each State in which the applicant carrier operates.

The Railroad Commission, public service or utility commissions, or other appropriate State authorities of the State, are given the right to make, before the Interstate Commerce Commission, such representation as they may deem just and proper for preserving and conserving the interest of their people and the States, respectively, involved in such proceedings. The Interstate Commerce Commission is authorized to give hearings upon such ap-

plications. Subdivision 7, however, of this section declares that the jurisdiction conferred upon the Interstate Commerce Commission shall be exclusive and plenary, and that carriers may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than therein specified. This act makes securities without compliance therewith void. It likewise prescribes a heavy penalty for any director, officer, attorney or agent of a carrier who knowingly assents to or concurs in any issue of securities, etc., contrary to the orders of the Commission.

Complainant, upon advice, avers that the aforesaid section of the Transportation Act is violative of the Constitution of the United States in the following respects:

(a) It attempts in paragraph 7 thereof to confer upon the Interstate Commerce Commission exclusive and plenary authority to regulate the issuance of stock, bonds and securities by railroad corporations created by the State of Texas and engaged in intrastate commerce, and to deny such authority to the State of Texas, in violation of the Tenth Amendment to the Constitution of the United States, reserving such power to the State of Texas.

(b) Said section of the Transportation Act violates subdivision 3, Section 8, Article 1, of the Constitution of the United States conferring power upon Congress to regulate interstate commerce, and denying to Congress the power to regulate intrastate commerce.

(c) That said section of the Transportation Act violates Article 3 and the Eleventh Amendment to the Constitution of the United States in that they authorize an action, by an application to the Interstate Commerce Commission, to be brought against the State of Texas before a tribunal other than the Supreme Court of the United States, by citizens of the United States, and of the State of Texas, and by persons and corporations other than a State or the United States.

(d) That said section of the Transportation Act violates Sections 1 and 2 of Article 3 of the Constitution of the United States conferring judicial authority exclusively upon the courts, and effectively denying it to Congress, or any administrative or executive board created by Congress; that subdivision 6 of said section of the Transportation Act recognizes that the State, and the people of the State, have rights to be preserved relative to the issuance of stocks, bonds and securities by railroad corporations created by

and operating within the State, but requires the State to appear, after notice, before the Interstate Commerce Commission, and not before the Supreme Court of the United States, for the defense and preservation of the rights and interests of the State and of the people of the State; that the hearing provided for before the Interstate Commerce Commission is made conclusive and plenary by subdivision 7 of said section of the Transportation Act, and the rights and interests of the State concluded without a hearing before the Supreme Court of the United States, in violation of the Eleventh Amendment to the Constitution; and without a hearing before the courts, in violation of Sections 1 and 2 of Article 3 of the Constitution of the United Sates, as previously alleged.

(e) Said section of the Transportation Act violates Section 1 of Article 1 and subdivision 18 of Section 8 of Article 1 of the Constitution of the United States in that they confer legislative power upon the Interstate Commerce Commission, an executive board created by Congress, to determine whether or not the issuance of stocks, bonds and securities by railroad corporations is "compatible with the public interest," without having defined that which is compatible with public interest.

(f) Said section of the Transportation Act violates the Fifth Amendment to the Constitution of the United States, which declares that liberty and property shall not be taken except by due process of law.

(g) Subdivision 12 of said Section 439 of the Transportation Act of 1920 is unconstitutional and void, because in violation of each of the articles and sections of the Constitution of the United States set forth in the foregoing paragraph of this bill of complaint; and further, the same is violative of Section 5, Article 10, of the Constitution of the State of Texas, which declares that no officer of a railroad corporation shall act as an officer of any other railroad corporation owning or having control of a parallel or competing line. Said provision in the Constitution of Texas is a valid one under the Constitution of the United States, adopted by the State of Texas under the Tenth Amendment to the Constitution of the United States, and under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, which together reserves the power and authority to the State of Texas to regulate its intrastate commerce, and control corporations created by it.

XVIII.

Complainant, on information and belief, alleges that, beginning as early as 1893, under constitutional laws appropriate thereto, the Railroad Commission of Texas valued the then existing railroads within the State of Texas, and has continued to do so since as to existing and all subsequent railroads. That it has, under proper constitutional statutes, supervised, regulated and limited the issuance of stocks and bonds by railroad corporations; that the result has been that it has ascertained and made public the value of railroad properties within the State of Texas used in intrastate commerce; that the railroads of the State of Texas have been, in the main, economically and properly constructed, with but a comparatively small amount of alleged "water" in the stock and bonds issued by Texas railroad corporations.

That Texas is a very large State, containing approximately 16,000 miles of railroads traversing the State in all directions; that Texas has many advantages in favor of the economical construction and maintenance of its railroad; that it had, in the beginning, many millions of acres of virgin pines and hardwoods, and yet has, all appropriate for use in the construction of railways and equipment, and which have been utilized from the beginning for this purpose; that large deposits of limestone, granite, rock, clays, gravel, sand and all other kinds and classes of natural resources appropriate and necessary for the economical construction and maintenance of railways have been available, and these natural resources have been continuously used for such purposes. That the greater portion of the surface of the State of Texas is level and rolling, without intersection by hills, mountains and valleys, or other physiographic characteristics requiring expensive cuts, fills and tunnels in the construction of railways; that throughout a great portion of Texas territory, and particularly the greater portion of the territory lying southwest of the City of Austin and west of the City of Dallas, or lines drawn north and south through the City of Dallas, and east and west through the City of Austin there are but few streams to be crossed, and comparatively few bridges, culverts and fills to be constructed; that Texas is and has always been a dry and arid climate, suitable to the preservation of cross ties, rails, dumps, cuts, fills, bridges, culverts and other elements of a constructed railroad; that through a large portion of the State the rainfall is only 10 inches per

annum, through a large portion it is 20 inches, and less, and through all that part of the territory west of a line drawn north and south through the City of Dallas, the rainfall is approximately 30 inches and less per annum, while in much of the territory east of such a line, the rainfall is but little in excess of such an amount, all of which is suitable for the economical construction and maintenance of railway lines. That the State of Texas had and enjoyed, and still has and enjoys all these natural advantages, contributing to the economical construction, maintenance and operation of the railway lines within its borders; that the railroads in Texas have had and do now have these natural advantages; that the people of Texas are entitled to all these natural advantages heretofore enumerated, and all other natural advantages, whether specially named here or not, and are entitled to any advantage which has accrued to them by the valuation of their railroads as aforesaid, and the supervision of the issuance of stocks and bonds by railroads by the Texas Railroad Commission.

That a table of the mileage and valuation of each of the railroads within the State of Texas, as ascertained and found by the Railroad Commission of Texas, is appended hereto as Exhibit No. 1; that the same is, for all practical purposes, substantially correct.

That the people of this State are entitled to a system of rates, fares and charges which produce a reasonable return upon these valuations, or valuations substantially the same as these, and that no system of rates reasonable within themselves producing such return are, or can be, discriminatory against interstate commerce, or give any undue or unreasonable advantage to or preference of persons and localities in intrastate commerce within the State of Texas, or create an undue and unreasonable prejudice to persons and localities in interstate commerce, even though such rates be less than the charges for the same service for the same distance of movements and carriage in interstate commerce.

That the average valuation per mile of railroad properties within the State of Texas, held for and used in the service of transportation, is materially less than the average valuation of such property throughout the United States, or in any of the groups or districts into which the United States has been divided by the Interstate Commerce Commission.

This allegation is based upon information received from various sources, including Exhibits Nos. 1, A, B, C, D and E, attached

hereto and shown in the appendix, respectively on pages 162-172 hereof.

Upon advice, complainant alleges that, under the law, the State of Texas and its citizens are entitled to a system of rates, fares and charges for intrastate transportation, which do not produce in excess of a reasonable return on the value of the railroad properties held for and used in the service of intrastate transportation; that such right is denied them by the several sections of the Transportation Act of 1920, hereinafter complained of, in violation of the Constitution of the United States.

That among the rights reserved to complainant at the time of its admission to the Union was that of having definite boundaries, fixed at the time of its admission, or changed thereafter only by agreement with the United States; that at the time of its admission into the Union, Texas had certain definite boundaries, which now exist, with the exception of such changes as have been mutually agreed upon between it and the United States, or fixed by decree of court.

That among other rights reserved to the State of Texas is that of regulating and controlling its own intrastate commerce, and basing the rates, fares and charges in such commerce upon the value of the service, and upon the value of the railroad properties actually used, or held for use, in intrastate commerce.

That notwithstanding the foregoing, the Congress of the United States, in the Transportation Act of 1920, in Section 422 thereof, in amending the Interstate Commerce Act, enacted a new section, to be known as Section 15a of the Interstate Commerce Act, which is copied in the appendix as Exhibit No. 11, page 143 hereof, and here referred to and made a part of this pleading to the same extent as if fully set forth in this bill. This section, in part, provides in substance as follows:

The first subdivision of said Section 15a defines the terms used in the section. The term "rates" is declared to mean rates, fares and charges, and all classifications, regulations and practices relating thereto. The term "carrier" is declared to mean a carrier by railroad, or partly by water within the continental United States, subject to the act, excluding, however, sleeping car and express companies, street or suburban electric railways, except as operated as a part of a general steam railway system, excluding electric railways in the same manner and excluding belt line railways, terminal switching railways, or other terminal facility owned

exclusively and maintained and operated and controlled by any State, or political subdivision thereof. The phrase "net railway operating income" is also defined.

Subdivision 2 of this section declares that the Interstate Commerce Commission in the exercise of its power to prescribe charges and reasonable rates shall initiate, modify, establish or adjust such rates so that the carriers as a whole, or as a whole in each of such rate groups or territories as the Commission may from time to time designate, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair rate upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. The Commission is likewise given reasonable latitude to modify or adjust any particular rate which it may find unjust or unreasonable, and to prescribe different rates for different sections of the country.

Subdivision 3 requires the Commission from time to time to determine and make public what percentage of the aggregate value constitutes a fair rate thereon, and requires that such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination, the act requires the Commission to give due consideration, among other things, to the transportation needs of the country, and to the necessity of enlarging such facilities in order to provide the people of the United States with adequate transportation. The act expressly requires the Commission for the two years beginning March 1, 1920, to take as a fair return designated in the statute, a sum equal to five and one-half per centum of the aggregate value of the railway properties, but permits the Commission in its discretion to add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision, in whole or in part, for improvements, betterments or equipment.

Subdivision 4 of this section authorizes the Commission to determine the aggregate value of the property of the carriers. In doing so, the Commission may utilize the results of its investigation under Section 19a of this act in so far as deemed by it available, and is required to give due consideration to all the elements of value recognized by the law of the land for rate-making purposes.

Subdivision 5 declares that in as much as it is impossible, with-

out regulation and control in the interest of commerce of the United States considered as a whole, it proposes to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic, and which are indispensable to the communities to which they render the service of transportation, without enabling some of the carriers to receive a net railway operating income, substantially and unreasonably in excess of a fair rate upon the value of their properties, that it is declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess as is designated in the act as a trustees for and shall pay it to the United States.

Subdivision 6 provides that if any carrier receives for any year a net railway operating income in excess of six per centum of the value of the railway property held for and used by it in the service of transportation, that one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall be recoverable by and paid to the Interstate Commerce Commission for the purpose of establishing and maintaining a general railroad contingent fund, described in the act.

Subdivisions 7 and 8 relate to the disposition which a carrier may make of its reserve fund, which includes the payment of dividends of interest on its stock, bonds or other securities. The carriers are not required to maintain a reserve fund in excess of 5 per centum of the value of their properties, and when such maximum amount has been reached, its proportion of the excess income may be used by it for any lawful purpose. The Commission is authorized to prescribe rules and regulations for the determination and recovery of the excess income, payable to it. The general railroad contingent fund so recoverable and payable to the Commission is made a revolving fund to be administered by the Commission. It is to be used by the Commission in the furtherance of the public interest in railroad transportation, either by making loans to carriers or by purchasing transportation equipment and facilities, and leasing same to carriers. The Commission is given authority to purchase, contract for the construction, repair and replace or sell equipment, etc. The manner of making loans of funds or leases of equipment to carriers is fully set forth in the act, particularly in Subdivisions 10 to 16 of this section.

Subdivision 17 declares that the section shall not be construed

as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates in excess of their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of the section.

Under Subdivision 18, any carrier or corporation organized to construct and operate a railroad proposing to undertake the construction or operation of a new line, is authorized to apply to the Commission for permission to retain for a period not exceeding ten years, all or any part of its earnings derived from such new construction in excess of the amount previously provided for in the section, for such disposition as it may lawfully make of the same.

That said Section 15a purports to authorize the Interstate Commerce Commission to create super-States out of the several States, or parts of them, in disregard of the boundaries of the States. That such super-States are authorized to be created for governmental purposes affecting the rights of the several States and their inhabitants, including the State of Texas, and the inhabitants thereof. That the creation of such super-States, or "rate groups," so-called, is in violation of the Constitution of the United States, and in derogation of the rights of the States to be and remain exclusive governmental units, with fixed boundaries in so far as the application and enforcement of the laws of the United States, and the States themselves are concerned, including all laws relating to both interstate and intrastate commerce.

That said Section 15a violates the Constitution of the United States in, among others, the following particulars:

(a) It violates the Tenth Amendment to the Constitution of the United States, reserving to the State of Texas the right to exist as an exclusive governmental unit of the United States within its defined boundaries.

(b) That said section violates the intent and meaning given the Constitution as a whole by the various provisions thereof specifying or recognizing the States as exclusive governmental units of the United States for the exercise of all political, legislative, judicial and executive authority; that said section directly violates subdivision 3 of Section 8, Article 1, which recognizes the States as governmental units in the regulation of commerce; it violates subdivisions 5 and 6, of Section 9, Article 1 of the Con-

stitution, which recognizes the States as governmental units for purposes of commerce, taxation and duties.

It violates subdivision 1 of Section 3, Article 4, of the Constitution which prohibits the formation of a new State within the jurisdiction of any other State, and the formation of any State by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, and of Congress; and it violates the Tenth Amendment to the Constitution which recognizes the States as governmental units to which is confided the reserve power not delegated to Congress or retained by the people.

That these and various other provisions of the Constitution, define and recognize the States as governmental units of the United States for all legislative, executive and judicial purposes; and, as such, deny to Congress the power to create out of the several States, or parts of States, any governmental unit for legislative, executive or judicial purposes. That Section 15a, having authorized the creation of rate groups for legislative, executive and judicial, or quasi-judicial, purposes in violation of the Constitution of the United States, is null and void.

(c) Said Section 15a violates the Fifth Amendment to the Constitution of the United States, prohibiting the taking of property without due process, in that it requires the rates, fares and charges made to be based on the aggregate value of the property in the rate group, instead of the value of the property actually in use for transportation purposes within the State; also in the collection, over and above a reasonable charge for transportation service, in rates, fares, and charges, of amounts of money which become the property of the United States. That such requirement violates the due process clause referred to, and that portion of the Fifth Amendment which prohibits the taking of private property for public use without just compensation.

(d) That Section 15a violates subdivision 3, Section 2, Article 1, and subdivision 4, Section 9, Article 1 of the Constitution, which declare that a direct tax can not be collected except upon apportionment among the several States according to population; that said section also violates subdivision 1, Section 8, Article 1 of the Constitution, which declares that duties, imposts and excises shall be uniform throughout the United States.

(e) That subdivision 6 of said Section 15a, among other things, declares that if, under the provisions of this section, any

carrier receives for any year a net railroad operating income in excess of 6 per centum of the value of the railroad property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half shall become the property of the United States to be used by the Commission in the manner specified in the act; that this, in effect, provides for the collection of a direct tax in violation of the provisions of subdivision 4 of Section 9, Article 1 of the Constitution, declaring that direct taxes must be in proportion to the population; and in violation of subdivision 3, of Section 2, Article 1, of the Constitution, which declares that direct taxes shall be apportioned among the several States according to the population; that the same is in violation of subdivision 1, Section 8, Article 1, of the Constitution, which requires that Congress, in levying duties, imposts and excises shall make these uniform throughout the United States; that said section, in that it authorizes the collection of money for the government by the carrier in excess of a reasonable rate of return to the carrier, authorizes the taking of property without due process, and the taking of property for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

(f) Subdivision 17 of said Section 15a of the Interstate Commerce Act as amended, is particularly in violation of the Fifth Amendment to the Constitution prohibiting the taking of property without due process, and the taking of property for a public use without just compensation, in that it expressly declares that if any particular rate may reflect a proportion of excess income to be paid by the carrier to the Interstate Commerce Commission in the public interest, yet, the shipper shall not be entitled to recover the same, nor be entitled to reparation therefor.

(g) Subdivision 18 of said Section 15a of the Interstate Commerce Act, as amended, is particularly in violation of the Fifth Amendment to the Constitution prohibiting the taking of property without due process in that, under certain conditions, the carrier is permitted to retain an excess of receipts over and above a reasonable rate or return for the service without accounting therefor to the shipper, or to the Government.

(h) That subdivisions 6 to 16, inclusive, of said Section 15a, as amended, providing in substance for loans by the Government of the United States of funds to carriers, and the purchase and

lease of equipment by the Government to carriers, are particularly in violation of the Constitution of the United States in that such provisions are beyond the powers conferred upon Congress by subdivision 3, Section 8, Article 1, of the Constitution, granting Congress the right to regulate interstate commerce; in that these sections authorize the use of public funds for other than governmental purposes when no authority therefor is conferred upon Congress by the Constitution; but, on the contrary, the use of public funds for governmental purposes only is one of the rights reserved to the people by the Tenth Amendment to the Constitution; and in that these sections confer special privileges upon common carriers in violation of subdivision 1, Section 2, of Article 4, of the Constitution.

XIX.

That among the rights reserved to the several States of the Union and to the State of Texas by the Constitution of the United States, is that permitting them to create and control private corporations, and particularly private corporations engaged in the business of common carriers, the property of which lies wholly within the State creating them. That the government of the United States and the Congress, which is its agency for legislative matters, and the Interstate Commerce Commission, a legislative and administrative agency created by the Congress of the United States, have no judicial authority authorizing them to determine any justiciable question where the rights of the State are involved; that justiciable controversies between the State of Texas and a sovereign State or the United States can only be instituted and determined, under the Constitution of the United States, particularly under Article 3, Section 2, in the Supreme Court of the United States; and cannot be determined before any other court, nor before any legislative body, or before Congress, nor before any legislative or administrative board or commission, nor before the Interstate Commerce Commission of the United States; that no citizen of the State of Texas, and no citizen of any other State, and no corporation of any kind or character can bring an action against the State of Texas, or against those lawfully acting for it as public officers in their official capacities, in any court, nor before the Interstate Commerce Commission of the United States, without the consent of the State of Texas.

That notwithstanding the aforesaid allegations, and all other allegations made in previous paragraphs of this bill of complaint, which, for the immediate purpose of this paragraph, are here reiterated as though pleaded as a part of this paragraph, complainant alleges: That the Congress of the United States did, by an act approved February 28, 1920, generally known as the Transportation Act of 1920, pass a pretended law in Sections 416 and 418 thereof, the substance of which will now be in part stated.

Section 416 amends Section 13 of the Interstate Commerce Act, while Section 418 amends a portion of Section 15 of the Interstate Commerce Act. The entire amended Section 13 and the first paragraph of Section 15 as amended are copied and shown in the appendix hereto respectively as Exhibits Nos. 12 and 13, pages 150-151.

Section 13 as amended provides that whenever in any investigation under the provisions of this act, or in any investigation instituted upon petition of the carriers concerned, there shall be brought in issue any rate, fare, charge, classification, regulation or practice made or imposed by authority of any State, that the Interstate Commerce Commission before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission is authorized to confer with the authorities of any State relative to this matter and to hold joint hearings with State agencies having the power to make rates where the rate making authority of the State is or may be effected by the action taken by the Commission.

Subdivision 4 of this section provides that whenever in any such investigation the Interstate Commerce Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation or practice imposes any undue or unreasonable advantage, preference or prejudice as between persons and localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful, the Commission shall prescribe the rate, fare or charge thereafter to be charged, and the classification, regulation or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. This subdivision declares that such rates, fares, charges, classifications, regulations and practices so prescribed by the Commission shall be observed, the law

of any State or the decision or order of any State authority to the contrary notwithstanding.

The substance of subdivision 1 of Section 15 as amended is: That whenever, after full hearing upon the complaint made, as provided in Section 13, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare or charge, or that any individual or joint classification, regulation or practice, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, then the Interstate Commerce Commission is authorized and empowered to determine and prescribe the just and reasonable rates, fares or charges to be thereafter observed, and what classifications, regulations or practices will be just, fair and reasonable to be thereafter followed; and shall make an order that the carriers cease and desist from such violation to the extent which the Commission finds that same does or will exist, and that the carriers shall not thereafter publish, demand or collect any rate, fare or charge for transportation or the transmission of intelligence other than the rates, fares or charges prescribed by the Commission, and that the carriers shall adopt the classifications and shall conform to and observe the regulation or practice prescribed by the Commission.

Upon information received from the opinions and orders of the Interstate Commerce Commission construing and applying the Transportation Act of 1920 in the following cases: Ex parte 74, in the matter of the applications of carriers in official, Southern and Western Classification territory for authority to increase rates, 58 I. C. C., 220; No. 11,764, in the matter of intrastate rates within the State of Texas, 60 I. C. C., 421; No. 11,703, in the matter of intrastate rates within the State of Illinois, 59 I. C. C., 350; No. 11,829, Nebraska rates, fares and charges, in the matter of intrastate rates, etc., 60 I. C. C., 305; No. 11,623, in the matter of rates, fares and charges, etc., in the State of New York, 59 I. C. C., 290; No. 11,763, in the matter of intrastate passenger fares, etc., in the State of Wisconsin, 59 I. C. C., 391; No. 11,775, in the matter of rates, fares and charges, etc., in the State of Arkansas, 59 I. C. C., 471; No. 11,776, in the matter of intrastate fares and charges, etc., in the State of Minnesota, 59 I. C. C., 502; No. 11,894, in the matter of rates, fares and charges, etc., the

State of Indiana, 60 I. C. C., 337; No. 11,762, in the matter of intrastate fares, etc., in the State of Michigan, 60 I. C. C., 245; and No. 11,863, in the matter of intrastate rates, fares and charges, etc., in the State of Louisiana, 60 I. C. C., 467, complainant alleges that in construing said Sections 13 and 15, as amended, in the light of, and in connection with Section 15a previously set forth in this pleading, and in construing said three sections together, the meaning and effect of the same are that:

(a) The Interstate Commerce Commission, in the administration of Section 15a, must determine, as nearly as may be, the aggregate value of the railroad property of the carriers defined in that section, held for and used in the service of transportation.

(b) That the Interstate Commerce Commission is authorized, by said Section 15a, to divide the United States up into groups and has done so, finding the aggregate value of the carriers' property held for and used in the service of transportation in each group.

(c) That the Interstate Commerce Commission, by said Section 15a, is required to determine the revenue needs of the carriers by the groups to which the States are assigned, and not by States.

(d) That the rate made by the Interstate Commerce Commission must be based on the aggregate value of the properties held for and used in the service of transportation within the entire group, and not by States.

(e) That in making rates, it is the duty of the Interstate Commerce Commission to disregard the value of the railroad properties held for and used in the service of transportation within each particular State, except in so far as such value is a part of the aggregate value of the property of the carriers so used in the group to which the particular State has been assigned. That the intent and meaning of said Section 15a and Sections 13 and 15 is to repose in the Interstate Commerce Commission full and final authority to provide the revenues found necessary to yield the specified return, by considering the entire structure of rates, both State and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to State lines.

(f) That under said sections of the Transportation Act, when the Interstate Commerce Commission has fixed the interstate rates, charges, fares and classifications which are reasonable for any group as such, based on the aggregate value of the property of the

carriers held for and used in the service of transportation within the group as a whole, then that the rates, charges, fares and classifications made by any State for intrastate commerce, regardless of the valuation of the properties held for and used in the service of transportation in intrastate commerce within the State, must be identical with those fixed by the Interstate Commerce Commission for interstate commerce;

(g) That if the rates, fares, charges and classifications fixed by State authorities for intrastate commerce are not the same as those for interstate traffic fixed by the Interstate Commerce Commission for the group in which the State has been placed by the Commission, then it will "result in intrastate rates, fares and charges being lower than the corresponding rates, fares and charges contemporaneously maintained on interstate traffic within the State and between points in the State and points in other States within that group; and will result in undue and unreasonable advantage to and preference of persons and localities in intrastate commerce within such State, and in undue and unreasonable prejudice to persons and localities in interstate commerce, and in unjust discrimination against interstate commerce";

(h) That under such circumstances the Interstate Commerce Commission has authority under said Sections 13, 15 and 15a, as amended by the Transportation Act of 1920, to remove such undue preference, prejudice and unjust discrimination "by making increases in said intrastate rates, fares and charges which shall correspond with the increases" theretofore made by the Interstate Commerce Commission for interstate rates, fares and charges within the group to which such particular State has been assigned by the Commission;

(i) That under said Sections 13, 15 and 15a of the Interstate Commerce Act, as amended by the Transportation Act of 1920, when once the Interstate Commerce Commission has placed a State within a group and made interstate rates, fares and charges for the group, based on the aggregate value of the railway properties within the group, the rate making authorities of the State have no alternative but to advance the intrastate rates, fares and charges to a level with the interstate rates, fares and charges so fixed; and upon the failure of the State authorities to so do, the Interstate Commerce Commission has authority, under said sections of the Transportation Act, to advance the intrastate rates, fares and charges to the same level as the interstate rates, fares and

charges fixed by them for the group, regardless of the value of the railway properties held for and used in the service of intrastate transportation, regardless of conditions as to local costs of equipment, construction and maintenance, and as to the value of the service locally to the people.

That Sections 13, 15 and 15a of the Interstate Commerce Act, as amended by the Transportation Act of 1920, construed, applied and considered together, are null and void and violate the Constitution of the United States in various particulars, and among others, the following:

(j) Said sections authorize the Interstate Commerce Commission to make intrastate rates, fares, charges and classifications in violation of subdivision 3, Section 8, of Article 1 of the Constitution conferring upon Congress authority to regulate interstate commerce only; and in violation of the Tenth Amendment to the Constitution reserving to the States the right to regulate intrastate commerce and make rates, fares, charges and classifications governing the same;

(k) Said sections of the Transportation Act violate the Tenth Amendment to the Constitution of the United States in that they invade powers reserved to the State of Texas to regulate intrastate commerce, and to create, control and regulate corporations doing business in the State of Texas;

(l) Said sections of the Transportation Act violate the Fifth Amendment to the Constitution of the United States, prohibiting the taking of property without due process and declaring that private property shall not be taken for public use without just compensation. Said sections particularly violate said amendment to the Constitution in that they require the making of arbitrary and unreasonable rates, fares and charges based upon an aggregate valuation of properties held for and used in the service of transportation in defined groups of States, instead of the valuation of property held for and used in the service of tranpsortation within each particular State of the group; and in that said sections authorize the collection, by the carriers, of unreasonable and excessive rates, fares and charges, a portion of which is to be retained by the carriers and a portion of which becomes the property of the United States;

(m) Said sections violate subdivision 1 of Section 2, Article 1, of the Constitution, in that they confer the special privilege upon citizens who reside in States in which the average value of rail-

way properties held for and used in the service of transportation is equal to or greater per mile than the average value per mile of such aggregate property within the group in which such State is placed, to pay rates, fares and charges on the value or less than the value of such property; while they deny this privilege to citizens residing in States where the average value per mile is less than the average per mile in the same group valuation;

(n) That said sections violate subdivision 3 of Section 2, Article 1, of the Constitution, and subdivision 4 of Section 9, Article 1, prohibiting a direct tax except apportioned among the States according to population; also violate subdivision 1, Section 8, Article 1, declaring that all duties, imposts and excises shall be uniform throughout the United States.

(o) That in substance and effect, these paragraphs of the Transportation Act also authorize the carriers to bring actions before the Interstate Commerce Commission against the State for the purpose of obtaining a decree authorizing the complaining carriers to disregard the rates, fares, charges, classifications, regulations, etc., provided by State laws or orders of the State Railroad Commission; that they in effect provide for the service of notice upon the State involved by the delivery of a copy of the petition, subpoena or notice to the State; that said act purports to give the Interstate Commerce Commission the right to hear such application, pleadings and evidence and to issue a decree granting the relief prayed for; that said paragraphs of the act purport to authorize the Interstate Commerce Commission to grant the relief asked for by the carriers without the consent of the State, or State authorities and in disregard of State laws and State authorities. Complainant upon advice avers that the issues named for determination in the statutes quoted are justiciable issues between the State on the one hand and the carriers on the other, and present questions for determination by a court and not by a regulatory or administrative body. That said statutes are in violation of the Constitution of the United States in that the execution of the same, and the exercise of authority under them by the Interstate Commerce Commission, involves the exercise of judicial power in violation of Article 3 of the Constitution of the United States conferring the judicial power exclusively upon the Supreme Court and inferior courts, and in that they violate the due process clause of the Fifth Amendment, that they also violate the Eleventh Amendment to the Constitution of the United States

prohibiting suits against the State by any citizen of the United States or subject of any foreign State; that they further violate Article 3 of the Constitution of the United States in that they attempt to confer jurisdiction on a tribunal other than the Supreme Court of the United States, to determine justiciable questions to which a State is a party, or that may affect the justiciable rights of a State;

(p) That paragraph 4 of said Section 13 is void in this: That the elements of "undue, unreasonable or unjust discrimination against interstate or foreign commerce," declared to be unlawful in said section, are not defined with definiteness and certainty; that said provision is so vague, indefinite and ambiguous that, in effect, the Congress has delegated to the Interstate Commerce Commission the power to enact the law, instead of laying down the rule, as was its duty to do, by which the Interstate Commerce Commission is to be governed; all in violation of Section 1, Article 1, and subdivision 18 of Section 8, Article 1, of the Constitution conferring legislative power exclusively upon the Congress.

XX.

Complainant avers that Sections 300 to 316, inclusive, of the Transportation Act, 1920, provide for the creation of one board known as the "Railroad Labor Board," and for the organization of various boards to be called "Railroad Boards of Labor Adjustment." The short title prescribed for the latter by the provisions of the law is "Adjustment Boards," while the former is designated "Labor Board."

The respective powers and duties of these boards are set forth in detail in the act, but will only be briefly referred to in this pleading. The whole of the Transportation Act relating to these boards is embraced in Sections 300 to 316, inclusive, of the Transportation Act, 1920, as printed in Exhibit No. 11, pages 152-159, in the appendix to this petition; and is here referred to and made a part hereof in all respects as if pleaded fully herein.

Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers or the carriers as a whole, and any employes or subordinate officials of carriers, or organizations, or group of organizations thereof. Each such adjustment board is required, upon the application of the chief executive of any carrier or organization of employes, or subordinate officials, whose members are directly interested in the dispute,

or upon the written petition signed by not less than one hundred unorganized employes or subordinate officials directly interested in the dispute, or upon the adjustment boards on motion, or upon the request of the Labor Board, whenever such board is of the opinion that the dispute is likely to interrupt commerce, to receive for hearing, and, as soon as practicable, with due diligence, decide any dispute involving grievances, rules or working conditions not decided in conference between carriers and their employes or subordinate officials, etc. The Railroad Labor Board created by the act, is composed of nine members: three members constituting the "Labor Group," representing the employes and subordinate officials of the carriers, are to be appointed by the President, by and with the advice of the Senate, from not less than six nominees whose nomination shall be made and offered by such employes in such manner as the Interstate Commerce Commission shall, by regulation prescribe; three members, constituting the "Management Group," representing the carriers are to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nomination shall be made and offered by such employes in such manner as the Interstate Commerce Commission shall, by regulation, prescribe: three members constituting the "Public Group," representing the public, are to be appointed directly by the President, by and with the advice and consent of the Senate. Vacancies on the Labor Board are to be filled in the same manner as the original appointments. The regular term of office fixed for members of the Labor Board is three years, and the salary of each is ten thousand ($10,000) dollars annually. It is made the duty of the Labor Board to hear and decide any dispute involving grievances, rules or working conditions in respect to which any Adjustment Board certifies that it has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof.

In case the appropriate Adjustment Board is not organized under the provisions of Section 302 of the act, it is provided that the Labor Board, upon the application of the chief executive of any carrier or organization of employes or subordinate officials, whose members are directly interested in the dispute, or upon a written petition signed by not less than one hundred (100) unorganized employes or subordinate officials directly interested in the

dispute, or upon the Labor Board's motion, if it is of the opinion that the dispute is likely to substantially interrupt commerce, shall receive for hearing and decide any dispute involving grievances, rules, or working conditions which have not been decided in conference between the carriers and their employes under Section 301 of the act, and which an Adjustment Board would be required to receive and decide under Section 303. By subdivision B of Section 307, the Labor Board is authorized, upon the application of the chief executive of any carrier, or organization of employes or subordinate officials whose members are directly interested in the dispute, or upon a written petition signed by not less than one hundred unorganized employes or subordinate officials directly interested in the dispute, or upon the Labor Board's own motion, if it is of the opinion that the dispute is likely substantially to interrupt commerce, to receive for hearing and decide all disputes in respect to wages or salaries of employes or carriers not decided in Section 301 of the act.

All decisions of the Labor Board are required to be entered upon the records of the Board, to be communicated to the president, to each Adjustment Board, to the Interstate Commerce Commission, and to be given further publicity in such manner as the Board may determine.

Subdivision D of Section 307 prescribes that all decisions of the Labor Board in respect to wages or salaries, and of the Labor Board and Adjustment Board in respect to working conditions, shall establish rates of wages, salaries and standards of working conditions, which, in the opinion of the Board are just and reasonable. This subdivison of the section sets forth certain things which must be considered by the boards in determining the justness and reasonableness of wages, salaries and working conditions. The Labor Board is required to elect a chairman by a majority vote of its members, and maintain a central office in Chicago, Illinois, but is authorized to meet in such other places as it may determine. The Board is required to collect and publish annually the decisions and regulations of the Labor Board and Adjustment Boards, and all court decisions, and administrative decisions and regulations of the Interstate Commerce Commission, with respect to these sections.

Any party to any dispute to be considered by an Adjustment Board or by the Labor Board are declared to be entitled to a hearing either in person or by counsel. The members of the Labor

Board are given authority to subpoena witnesses, and require the production of papers, documents, and evidence from any place in the United States, at any designated place of hearing. The taking of depositions is likewise authorized. The members of the Labor Board are given authority to administer oaths and examine witnesses. When necessary, any member of the Labor Board, officer, employe or agent thereof, may, upon written authority of the Board for the purpose of examination, have access to and the right to copy any book, act, record, paper or correspondence, relating to any matter which the Board is authorized to consider or investigate. Any person on demand, who refuses such right of access, etc., becomes liable, upon conviction, to a penalty of five hundred ($500) dollars for each offense. It is made the duty of every officer and employe of the United States when requested by any member of the Labor Board, or by an Adjustment Board, when duly authorized by the Board for such purpose, to supply any data or information pertaining to the administration of the functions vested in it by this title which may be contained in the records of his office.

Section 313 declares that the Labor Board, in case it has reason to believe that any decision of the Labor Board or an Adjustment Board is violated by any carrier or employe or subordinate official or organization thereof, may, upon its own motion, after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred, and make public its decisions in such manner as it may determine.

Said sections of the Transportation Act are unconstitutional and void for various reasons, among which are the following, towit:

(a) Because said sections violate the Tenth Amendment to the Constitution of the United States reserving to the States and the people of the States all powers not granted to Congress. That among the rights so reserved to the people is the right to fix wages and working conditions by contract when dealing with each other in the relation of employer and employe, and particularly the right to fix wages and working conditions upon contracts by and between common carriers and their employes, subject only to the qualification that freight and passenger rates, fares, and charges shall be reasonable in both interstate and intrastate traffic, to be determined, respectively, by the United States and the States; or, if such right was not reserved primarily and finally to

the people, then it was reserved primarily and finally to the States, and conclusively denied to the United States;

(b) That said sections of the act further violate the Tenth Amendment to the Constitution of the United States in this:

That among the powers reserved to the States is the power to pass and enforce anti-trust laws and laws prohibiting combinations and conspiracies in restraint of trade; that the State of Texas, acting by virtue of this sovereign power thus reserved to it, has heretofore made and established and now has in force and effect, under its Constitution and statutes, a code of anti-trust and anti-combination laws for the protection of its citizens. That the substance and effect of these laws has heretofore been set forth in this pleading in paragraph IX, and is here referred to and made a part of this paragraph; said laws are copied in Exhibit No. 1, page 120, in the appendix hereof, and are made a part of this pleading.

That notwithstanding said valid and constitutional laws of the State of Texas, passed and enacted under authority of the power reserved to the State, and the people of the State, by the Tenth Amendment to the Constitution of the United States, the said Transportation Act of 1920, in Sections 300 to 316, inclusive, authorizes and requires the carriers and their employes to enter into trusts, conspiracies, combinations and monopolies in restraint of trade in violation of said valid, constitutional and statutory provisions of the Constitution and laws of Texas, and in violation of the Tenth Amendment to the Constitution of the United States.

That in addition to the power reserved to the State of Texas under the Tenth Amendment to the Constitution of the United States to protect its people against trusts, monopolies, conspiracies in restraint of trade, there was and is reserved, by the Tenth Amendment, to the people the primary and fundamental right to have their business, and the business of the country generally, and particularly the business of common carriers, conducted in a manner free from trusts, monopolies, and combinations and conspiracies in restraint of trade, and under the free and untrammeled right that the business of common carriers and their employes engaged in such business shall be entered into and conducted upon a competitive basis. That notwithstanding said allegations, the Transportation Act of 1920, in Sections 300 to 316, inclusive, in violation of the Constitution of the United States, and of the valid and constitutional laws aforesaid, and of the rights of the

people reserved to them, has authorized and prescribed a method for the carriers and their employes to conspire, and enter into a combination, or combinations, which create, and tend to create, and carry out restrictions in trade, commerce, aids to commerce, and in transportation, and to carry out restrictions in the free pursuit of the business of common carriers and the occupations of their employes. That said sections of the Transportation Act authorize the doing of each and all of those things heretofore specifically mentioned as having been forbidden by the anti-trust, anti-monopoly and anti-conspiracy statutes of the State of Texas; that all the evils herein referred to and prohibited by the statutes of Texas may be effectuated and carried out by railway corporations and their employes, in the manner authorized by said unconstitutional statutes of the Transportation Act of 1920, either voluntarily or under the direction of the said Railroad Labor Board acting under its pretended authority;

(c) That said sections of said act further violate the Tenth Amendment to the Constitution of the United States and subdivision 1, Section 2, Article 4, of the Constitution of the United States, in this: That among the powers reserved to the State, and to the people, by said constitutional provisions, is that the citizens of each State shall be entitled to the privileges or immunities of the citizens of the several States, and that all freemen shall have equal rights and that no man or set of men shall be entitled to special privileges. That in conformity with these powers reserved to the States, and the people of the States, for the purpose of effectuating these rights thus reserved, the State of Texas placed in its Constitution in 1876 a provision known as Section 3, Article 1, especially declaring, "All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to separate public emoluments or privileges but in consideration of public services." That this language was contained in substance in all previous Constitutions of the State of Texas, including the Constitution of 1845, under which Texas was admitted into the Union.

But notwithstanding the express reservation of equal privileges to all citizens contained in said subdivision 1, Section 2, Article 4, of the Constitution of the United States, and notwithstanding the reservations made in the Tenth Amendment to said Constitution, and in the aforesaid valid and constitutional provision of the Constitution of Texas, the said Transportation Act of 1920 in viola-

tion thereof, has, by Sections 300 to 316, inclusive, conferred upon certain citizens of the United States, individual and corporate, certain special privileges, the exercise of which affects the right of all citizens of the State of Texas, and of the United States;

(d) That among other things, said sections of the Transportation Act authorized the carriers and their employes to create official boards, known as "Railroad Boards of Labor Adjustment," which "Boards of Labor Adjustment" may be established by agreement between any carrier, group of carriers or the carriers as a whole, and by employes or subordinate officers of carriers, or an organization or group of organizations thereof. That such "Railroad Boards of Labor Adjustment" thus authorized to be created are given authority by Section 303 of the act over questions involving grievances, rules and working conditions between carriers and their employes, and to establish wages which shall be the lawful wages between the carriers and employes. That said "Railroad Boards of Labor Adjustment" are given authority to, and are required to perform various and sundry duties outlined and prescribed in Sections 300 to 316 of the Transportation Act of 1920, the effect of which is to give said boards power to define, regulate, fix and determine grievances, rules, working conditions and salaries and wages between carriers and their employes, and thus to materially and substantially affect all freight and passenger fares, rates and charges paid by the public. That the decisions of said "Adjustment Boards" are required to be published by the "Labor Board" created by said act; that such "Adjustment Boards" are given visitatorial powers over all officers and employes of the United States for the purpose of procuring data or information pertaining to the administration of the duties of their office.

That all violations of the orders of the "Adjustment Board" are made violations of the law; and when the "Labor Board" determines that the orders of the "Adjustment Board" have been violated, Section 313 of the Transportation Act requires that the fact of such violation shall be made public in such manner as the "Labor Board" may determine. That the manner and method of the creation, organization and operation of such "Adjustment Boards" deny to the State, and to the people, their right to be charged in transportation rates, and charges, for a wage scale and reasonable working conditions produced by competition; that said act authorizes the carriers and employes, by means of said Adjust-

ment Board erected by themselves to enter into conspiracies in restraint of trade, which may materially add to the cost of transportation, and to pass the cost on to the producer and consumer who are not given the right to be heard by said act; that wages and working conditions become a part of the rate fixed for passenger and freight service by the carriers, and said sections of the Transportation Act direct the fixing of this portion of the rate by an authorized and legalized conspiracy among the carriers as between themselves and between their employes under or by a board created and erected by themselves, without giving the State, or the people, the right to be heard;

(e) That said sections of the Transportation Act authorizing the creation and erection of "Railroad Boards of Labor Adjustment" are in violation of subdivision 9, Section 8, Article 1, of the Constitution of the United States, which grants to Congress alone the power "to constitute tribunals inferior to the Supreme Court."

(f) That said sections in the Transportation Act violate subdivision 3, Article 6, of the Constitution of the United States in that they assign to the members of such "Adjustment Board" the exercise of the prerogatives and functions of public officers without requiring them to take oath of office required of officers by the Constitution;

(g) Said provisions of the Transportation Act creating such "Adjustment Boards" are in violation of subdivision 2, of Section 2 of the Constitution of the United States, in that the members of such Board though exercising the functions of government as public officers are not required to be appointed by the President, nor by the head of any department of the Government, but are appointed by the carriers and their employes.

(h) That said Sections 300 to 316, inclusive, of the Transportation Act, authorize the creation of a board to be known as the "Railroad Labor Board" to be composed of nine members. The provisions for the creation of this Board are contained in part in Section 304.

That the "Labor Board" thus created, as public officers of the United States, receive a fixed salary and their expenses to be paid by the United States, and exercise certain franchises and functions of government defined and set forth in the sections of the act referred to. The Board, under conditions named in the act, has authority to decide any dispute involving grievances, rules or

working conditions between carriers and their employes, and to establish rates of wages and salaries, and standards of working conditions, and to supervise generally the relationship between carriers and their employes. They have authority to make orders, and suspend them; to administer oaths, have hearings, take evidence, and to do generally any and all things relative to the matters of their jurisdiction, which may be done by the Interstate Commerce Commission relative to its jurisdiction, or by a court with reference to matters cognizable by a court.

The "Labor Board" is required to select a chairman, and maintain central offices in Chicago, Illinois, but may meet in other places. Any parties to any dispute to be considered by the "Adjustment Board" or the "Labor Board" are entitled to a hearing either in person or by counsel. The Board is given power to punish any carrier, employe, or subordinate officer, or organization thereof, when it concludes after hearing that any decision of the "Labor Board" or of the "Adjustment Board" is violated. The punishment prescribed in Section 313 is that the Board may make public its decision in such manner as it may determine. That the effect of this act is to make unlawful the violation of any wage scale or standard of working conditions prescribed, or other matter subject to the jurisdiction of this Board, or the Adjustment Board, and thereby, and by means of publicity, to hold the violator thereof up to public scorn and contempt, and public injury; and to make unlawful any such violation, to the end that the party charged with such violation will be unable to maintain an action in a court of equity for redress of his or its claims, wrongs or injuries; that the manner of making known the opinion of the "Labor Board," nor the extent it shall be made public is not prescribed by the law, but is left to the discretion and determination of the Board.

Said Section 313 is unconstitutional and void in that it fixes or permits the "Adjustment Boards" or "Labor Board" to determine and fix a penalty which is by its nature unusual and cruel and in violation of the Fourth and Eighth Amendments of the Constitution of the United States.

In this connection complainant alleges that because of said section the railroads have been compelled and are now being compelled to submit to unreasonable contracts and awards and are without remedy at law to properly and effectually adjust the questions which have been passed upon and recommended by the "La-

bor Board" and "Adjustment Boards," but have been compelled and are being compelled to submit to same and to bear the expense occasioned thereby and to add such expense to the operating expense account which said account is used by the Interstate Commerce Commission in determining the rates and fares of freight and passenger traffic on the railroads of the United States and the State of Texas in the manner hereinabove alleged.

Complainant shows that the punishment as fixed is unusual and cruel in that it is uncertain and when inflicted it is impossible to determine the extent of the injury, but complainant alleges that it would result, under many circumstances, in irreparable loss to the railroads and to the people of the United States and of the State of Texas in this, towit: When the "Labor Board" and "Adjustment Boards," or either of them, have made a decision and the railroad company does not see fit or is unable to comply therewith and said fact is published in the manner authorized and directed in Section 313, the employes of the railroad involved would immediately engage in a strike; that sympathetic shippers would divert their freight and boycott the railroad and many other shippers not interested in the subject matter would divert freight, fearing a "tie-up" and a failure of delivery; that passengers would travel by other routes because of fear of missing connections or for other reasons and the extent of the loss to the railroad company and to the shippers along its line who do not have access to other roads for travel and shipping their freight could not be estimated and would be an enormous amount and the punishment thereby inflicted upon the railroad company as a penalty would be cruel, unusual, indefinite and unreasonable and therefore in violation of the Fourth and Eighth Amendments of the Constitution of the United States.

(i) That said provisions of the law relative to the Labor Board, permitting the "Labor Group" and the "Management Group," to name the nominees from which the President must make his appointments, deny to all citizens the right to be considered for appointment, and to be appointed by the President to these offices, and create special privileges in violation of the Constitution of the United States; said provisions are in violation of paragraph 1, Section 2, Article 1, of the Constitution of the United States, which reserves to all citizens alike the same privileges and immunities; that they violate subdivision 3, Section 9, Article 1, of the Constitution of the United States in that it attaints all citizens

of the United States who do not belong to the "Labor Group" or the "Management Group" by denying to them the right to select their public officers, and making their eligibility to public office depend upon nomination by classes of individuals, defined as "Labor Groups" and "Management Groups."

Said provisions of this act violate subdivision 2, Section 2, of Article 2 of the Constitution of the United States in that they deny to the people and to the President the constitutional right of the President to appoint public officers from the citizens generally of the United States, and require him to have the consent and advice of those organizations, defined by the act as the "Labor Group" and the "Management Group" in addition to the advice and consent of the Senate. Said provisions of this act also violate the said several provisions of the Constitution in that it authorizes certain individuals known as the "Labor Group" and "Management Group" in effect, to select and appoint the members of the "Labor Board," when the right of selecting and appointing public officers can only be exercised through the elective franchise of all the people, or by the President alone, or by the President with the advice and consent of the Senate. Said provisions of the law are further violative of Article 6, subdivision 3, of the Constitution of the United States, in that they do not require the membership of said "Labor Group," and of said "Management Group" to take the oath of office prescribed by the Constitution before exercising the function of officers in appointing the members of the Labor Board or giving their consent and advice to the appointments to be made by the President. Said provisions of the Transportation Act violate subdivision 1, Section 2, Article 4, of the Constitution giving to all citizens the same rights and privileges, and also the Tenth Amendment to the Constitution, reserving to all the people their rights, in that they confer upon two privileged classes, towit: the "Labor Group" and to the "Management Group," the power and authority to select the membership of the Labor Board, or to exercise the official function of advising and consenting to the appointment of certain public officers by the President.

(j) That said sections of the act violate subdivision 1 of Section 1 of Article 2 of the Constitution of the United States, which vests the executive power in the President; that appointment to office is an executive function, and cannot be vested in any other department than the executive department of the government without express constitutional sanction. That Congress is with-

out power to define the *"groups"* or classes from which the President shall make his appointments; that provisions to the effect that the "Labor Group" and the "Management Group" shall make certain nominees is not the prescribing of qualifications of the officers composing the "Labor Board," but is an arbitrary and unconstitutional grant of special privileges to the "Groups" referred to; said provisions of the act under consideration and particularly the last sentence in subdivision 3 of Section 304, providing for the manner of filling vacancies on the "Labor Board," are violative of the various provisions of the Constitution heretofore referred to, and violative of subdivision 3 of Section 2, Article 2, of the Constitution of the United States, which gives the President plenary power without the advice or consent of anyone to fill vacancies which may happen during the recess of the Senate.

Said provisions of the act referred to violate the Tenth Amendment to the Constitution of the United States, in that one of the powers reserved to the people themselves is that the United States shall not make any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of liberty without due process, or deny to any person equal protection of the laws.

(k) Said sections of the act under consideration are further unconstitutional and void in that no opportunity is given the Interstate Commerce Commission, any of the State Railroad or Public Utilities Commissions, or the public, or any individual citizen, to make complaint to or appear before said "Labor Board" for the purpose of presenting the side of the public on any matter, including wages and working conditions, over which the Board has jurisdiction; that all of the acts of the Board enter into and affect the public, and the freight and passenger fares and charges to be paid by the public in a material way, and the denial by the law of the right of the public, either through its duly constituted officers or by organizations or by individuals, of the right to be heard, is in violation of the Fifth Amendment of the Constitution of the United States, which declares that property shall not be taken without due process.

(l) Said sections of the act, and particularly subdivision (d) of Section 307 is further violative of the due process clause of the Fifth Amendment to the Constitution, and of Section 1, Article 1, and subdivision 18, Section 8, of Article 1, in that in said sections, and specifically said subdivision, an attempt is made to confer

legislative authority upon the Labor Board and Adjustment Boards, to establish rates of wages and salaries and standards of working conditions, which are reasonable, without the law having defined the kind and character of wages and salaries which shall be reasonable, nor defined, what shall be under the law, reasonable standards of working conditions.

Said subdivision (d) of Section 307 is also in violation of the Constitution in this: that in enumerating the circumstances which must be considered by the Boards in determining the justness and reasonableness of wages and salaries and standards of working conditions, the act has omitted therefrom the value of the services to the carriers and to the public, for which wages and salaries are to be paid, and has omitted therefrom the value and cost of the various articles, classes and commodities handled in commerce, and other material matters for consideration, which would necessarily be considered by carriers engaged freely in commerce. That such omission will necessarily result in unreasonable wages and take the property of the public without due process in violation of the Constitution of the United States.

(m) Said act, in Section 308, violates subdivision 17, Section 8, Article 1, of the Constitution of the United States, in that it authorizes the "Labor Board" to have its offices in Chicago, Illinois, instead of Washington City, in the District of Columbia, which is the seat of government of the United States.

(n) Said act in Section 311 violates the Fourth Amendment of the Constitution of the United States, which declares inviolate "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures," and that "no warrant shall issue but upon probable cause, etc," in this: that Section 311, subdivision (a), confers upon the Labor Board any of its members, officers, employes or agents the pretended right of access to, and privilege of copying from, any book, account, record, paper or correspondence relating to any matter which the Board is authorized to consider or investigate; and a heavy penalty is prescribed for any person who denies such right of access or hinders, delays, or obstructs the exercise of such right. That said section does not confine this visitatorial authority to the carriers or employes, or organizations of each, but applies to all citizens of the United States regardless of their relationship to the business of common carriers.

(o) Said act, and particularly Section 313, is in violation of

Article I of the Constitution of the United States, and particularly of Section 1 of said article, which vests all legislative powers in the Congress of the United States in this: that said Section 313 prescribes that the punishment for failure of any carrier, employe or subordinate officer or organization thereof, to obey the orders of the "Labor Board," or an "Adjustment Board," or for violating such orders of either Board, shall be, by the "Labor Board" making public its opinion when such violation has occurred in such manner as the "Labor Board" may determine. That the publicity described is the method of punishment fixed for violations of the orders of the Labor Board and Boards of Adjustment, but the same is arbitrary, indefinite, uncertain, and undefined; that leaving the character, manner, method and extent of the punishment for determination by the "Labor Board" is, in effect, conferring legislative authority upon executive officers in violation of the Constitution of the United States, as above stated; that said provision also violates the due process clause of the Fifth Amendment to the Constitution in that it injures or destroys the reputation of one accused of violating the orders of said Boards without trial by judicial proceedings under the law, and without a penalty having been fixed by Congress therefor; that said section is also in violation of Article 3 of the Constitution of the United States, which confers the judicial power exclusively upon the courts of the United States. That whether or not a carrier or employe, or organization of either has violated an order of said Boards, contrary to law, is a justiciable question, cognizable only by courts created under Sections 1 and 2 of Article 3 of the Constitution of the United States, and the attempt to confer this authority on the "Labor Board" is an encroachment both on the legislative and judicial powers of the government as defined in the Constitution.

Said section is also violative of Section 3, Article 3, of the Constitution of the United States and of the Sixth and Seventh Amendments to the Constitution of the United States, prescribing trials by jury in civil and criminal cases and requiring that such trials shall be in the State where the offense, if any, was committed.

For all of the foregoing reasons, said Sections 300 to 316 of the Transportation Act of 1920 are unconstitutional, null and void.

XXI.

Complainant avers that the Railroad Labor Board and the Interstate Commerce Commission, without power or authority, constitutional or otherwise, are each exercising functions, powers and authority attempted to be given to each of them respectively by act of Congress in the "Transportation Act of 1920" and are making findings, entering orders, and attempting to enforce its provisions in accordance with said act and several sections herein referred to, and are claiming and intend to exercise power and authority under said act and said several sections thereof.

That the acts of the Railroad Labor Board in fixing wages, salaries, establishing working conditions, practices and regulations of the various employes of the railroads of the United States and of the State of Texas have caused an enormous increase in the amount of railroad operating expense; and that its orders in force and effect at the present time have resulted in unnecessary, unreasonable and unjust wage to many of the employes of the said railroads within the State of Texas; that such salaries and wages are out of proportion to wages paid for like services in other and similar positions and employment, paid and received by the people of the State of Texas, and is an unjust and unreasonable demand upon the railroads of the State of Texas resulting in the necessity for and an increased operating income; and complainant further avers that by reason of such unjust, unreasonable wages, salaries, working conditions, practices and regulations, the Interstate Commerce Commission acting under the pretended authority of the Transportation Act in order to create and obtain for the railroads of the State of Texas an operating income pursuant to the Act of Congress of 1920 above alleged, and sufficient to pay the wage scale and carry out the practices and regulations so fixed and maintained by said Labor Board, has fixed fares and charges for the transportation of passengers and freight which are unjust and unreasonable. All of which causes and has caused a great loss to the producers and shippers of the State of Texas, a great diminution of freight and passenger traffic to the railroads of the State of Texas and has caused and is causing a great financial loss to the people of the State of Texas, producers, shippers and carrier alike in violation of the constitutional right particularly guaranteed to them by the Fifth and Fourteenth Amendments of the Constitution of the United States.

Tha the Interstate Commerce Commission has granted Certificates of Convenience and Necessity to railroads within the State of Texas authorizing and directing them to cease operation of trains and to dismantle their railroads and dispose of their physical property contrary to the Constitution and laws of the State of Texas, and in disregard of their contract obligations with the people of the State of Texas, and particularly of the vicinities through which such railroads pass. That the Interstate Commerce Commission has refused to grant Certificates of Convenience and Necessity and to permit railroads within the State of Texas to advertise and charge fares and freight rates and to receive passengers and freight from connecting carriers and transport same in accordance with the laws of the State of Texas, and has refused to permit the construction of railways within the State of Texas by persons and corporations who have complied with the Constitution and laws of the State regulating the chartering, organization, construction and maintenance of railways wholly within the State of Texas. That the Interstate Commerce Commission is exercising the powers attempted to be granted in the Transportation Act to supervise and regulate the issuance of bonds, certificates and other securities by the railroads of the State of Texas when so issued in accordance with the Constitution and laws of the State of Texas regulating the issuance of bonds, certificates and securities; that thereby the railroads of Texas and the people of Texas are compelled to submit to the demands And conform to the rules and regulations of the Interstate Commerce Commission at an unnecessary expense and great inconvenience resulting in the loss of property and in the taking of their property without due process of law contrary to their right guaranteed under the Constitution of the United States.

And that the Interstate Commerce Commission is making rates, charges, fares, issuing orders, regulations and schedules and establishing practices requiring and compelling the railroads of the State of Texas to comply and conform thereto; and that the said Interstate Commerce Commission has issued an order placing the State of Texas in what is designated as the "Western Freight Group" and has and will continue to require the railroad companies of the State of Texas to charge and control fares, rates and charges contrary to the statutes of the State of Texas and its Constitution and valid contracts of said railroad companies, all of which acts, orders, rules and regulations are contrary to the stat-

utes and Constitution of the State of Texas and the United States, and as heretofore alleged, the railroads of Texas are now and will be called upon to pay more than their just share upon property within the State to supply the operating income demanded by the railroads of the United States; that said Interstate Commerce Commission intends and will whenever it deems it necessary and desirable, authorize the creation and operation of trusts, combinations and monopolies among railroads in Texas without regard for the Constitution and statutes of Texas relative thereto, and thereby the people of the State will be deprived of their right to have competing carriers and freight competition; that the State of Texas in its sovereign capacity is being sued and has been and will be sued and made a party to suits involving the rights, powers, privileges, sovereignty and property of said State before the Interstate Commerce Commission of the United States contrary to the Constitution as herein alleged.

Complainant further alleges that great and grievous injury and damage is resulting to it and its citizens by reason of the enactment of the Act of Congress known as "The Transportation Act of 1920"; that it is shorn of large powers of sovereignty, viz: legislative, executive and judicial powers reserved to it by the Constitution of the United States, and it is deprived of privileges and immunities guaranteed to it as a sovereign under the Constitution of the United States, and that citizens situated in the boundaries of Texas and that its citizens and railroads are unauthorized to do and prohibited from doing acts and things otherwise legal and lawful except for the provisions of said act and the acts of the defendant herein.

Forasmuch, therefore, as complainant is without adequate remedy at law and its only protection in the premises must arise from the powers of this Honorable Court, in the exercise of its original jurisdiction, the State of Texas respectfully prays that there be granted a writ of subpoena issuing out of this Honorable Court to be directed to the Interstate Commerce Commission by service upon its chairman, Edgar E. Clarke, to the Railroad Labor Board by service upon its chairman, R. M. Barton, the defendants herein named, demanding them and requiring them and each of them to appear and answer thereto, but not under oath, answer under oath being expressly waived; and that the so-called Transportation Act of 1920, and particularly Sections 300 to 316, inclusive, 402 to 407, 416 and 418, 402, subdivisions 18 to 22, 407,

subdivisions 1 to 8, 122, subdivisions 1 to 18, 439, subdivisions 1 to 11, be declared invalid, unconstitutional and void; and that the defendants named herein and constituted bodies corporate be declared and adjudged illegal and without statutory or constitutional authority; and that any and all laws or parts of laws, directing, empowering, regulating the creation, appointment, qualification and terms of service and granting authority to defendants named and the several members thereof be declared invalid, unconstitutional and void and the acts, orders and all things authorized to be done or performed by defendants be declared void, invalid and of no force and effect and without force of law, or if any part of said Transportation Act of 1920 be held to be constitutional, the remaining sections and portions thereof and all other laws in aid thereof be declared invalid, unconstitutional and void; and that the defendants and each of them be enjoined and restrained from enforcing all or such invalid and unconstitutional portions of the laws herein complained of in the State of Texas in such a manner as to interfere with the regulation of internal affairs of the complainant and the enforcement of its Constitution and its constitutional and valid laws, regulations and contracts, and the constitutional rights of its citizens, and that complainant may have such other and further relief as to this court may seem just and equitable in the premises.

STATE OF TEXAS,
By C. M. Cureton,
Attorney General for the State of Texas,
Bruce W. Bryant,
Eugene A. Wilson,
Walace Hawkins,
Tom L. Beauchamp,
Assistant Attorneys General, and
John E. Benton,
Washington, D. C.,
Solicitors for the State of Texas.

State of Texas,
County of Travis.

I, Tom L. Beauchamp, being duly sworn, depose and say that I am an Assistant Attorney General of the State of Texas and one of the solicitors signing the foregoing bill of complaint; that I have read same and know the contents thereof; that so far as

the same are allegations of fact, they are true of my own knowledge, and so far as they are allegations upon advice, information and belief, I believe them to be true.

TOM L. BEAUCHAMP.

Subscribed and sworn to in the City of Austin, County of Travis, at the Capitol of the State of Texas in said county, this 23rd day of May, A. D. 1921.

VANCE STOCKTON,
Notary Public, Travis County, Texas.

EXHIBIT NO. 1.

SUMMARY OF VALUATIONS OF RAILROADS AS ASCERTAINED BY THE RAILROAD COMMISSION.

TABLE NO. 1.

Summary of Valuations of Railroads as Ascertained by the Railroad Commission of Texas under Requirements of Article 6719, Revised Civil Statutes of Texas, 1911, up to December 31, 1919, Including Additions and Betterments, as Reported to the Commission Since Original Valuations and to December 31, 1919.

Name of Railroad (The words "The," "Railroad," "Railway" and "Company," omitted)			1 Date of original valuation or book cost.	2 Mileage	3 Amount of original valuation or book cost.	4 Average per mile.	5 Total additions and betterments since original or latest valuation (see note)	6 Total valuation to Dec. 31, 1919, including additions and betterments	7 Mileage including additions.	Average per mile of total valuation Column 6
Abilene & Northern	(*Ft. W. & D. C.*)		Jan. 15, 1908	38 53	$ 555,622 53	$ 14,421	$ 2,086 82	$ 557,709 35	38 70	$ 14,411
Abilene & Southern			Feb. 20, 1912	72 17	1,087,066 00	15,063	D 952 56	1,086,113 44	72 17	15,039
Angelina & Neches River		*	June 30, 1912	30 63	210,550 73	6,874	10,698 12	221,248 85	30 63	8,203
Aransas Harbor Terminal			Dec. 31, 1913	a 6 50	402,587 24	61,937	81,171 18	483,758 72	a 10 47	46,350
Artesian Belt			Mar. 5, 1914	42 21	551,572 80	13,138	6,101 89	560,674 69	42 23	13,276
Asherton & Gulf			Mar. 26, 1913	32 50	468,410 84	14,413	25,656 78	494,067 62	32 10	15,392
Bartlett Western			Mar. 27, 1916	23 27	246,959 04	10,613	8,691 46	255,653 50	23 20	11,020
Beaumont & Great Northern	(*M. K. & T.*)		Oct. 17, 1912	18 72	933,810 69	19,166	D 52,700 18	881,110 51	18 30	18,242
Beaumont, Sour Lake & Western	(*St. L. B. & M.*)		Sept. 28, 1912	84 31	2,158,749 37	25,605	581,391 58	2,740,140 95	84 29	32,508
Beaumont Wharf & Terminal	(*G. C. & S. F.*)	c	Oct. 17, 1909	a 3 92	179,481 24	45,786	25,609 32	205,090 56	a 5 13	39,978
Brownwood, North & South	(*St. L. S. F. & T.*)		April 24, 1912	17 65	316,264 96	17,919	D 29,450 04	286,814 92	17 65	16,250
Bryan & Central Texas Interurban			April 1, 1914	16 00	266,313 69	16,643				
Mile 7 to Mile 12 53 (inclusive)			Dec. 16, 1914	6 53	79,289 97	12,142				
Total				22 53	345,603 66	15,340	D 148,875 72	196,727 94	23 34	8,429
Bryan & College Interurban			May 11, 1915	4 67	150,892 63	32,311	D 5,388 76	145,503 87	6 50	22 385
Cane Belt	(*G. C. & S. F.*)	b	May 26, 1902	107 81	1,407,560 49	13,052	118,469 91	1,526,030 40	107 96	14,135
Caro Northern		*†	June 30, 1912	16 63	115,718 08	6,958	D 5,332 54	110,385 54	16 63	6,638
Chicago, Rock Island & Gulf			Mar. 21, 1904	32 08	1,197,552 85	37,330				
Chicago, Rock Island & Gulf			Oct. 18, 1901		1,185,000 00					
Ft. Worth to Red River			June 28, 1895	92 99	1,833,202 12	19,714				
Bridgeport to Jacksboro			July 25, 1901	28 77	483,760 78	16,815				
Bravo to State Line (via Dalhart)			Nov. 11, 1902	91 75	1,475,361 25	16,080				
Jacksboro to Graham			May 6, 1903	26 52	443,460 12	16,722				
Amarillo to State Line near Texola			Mar. 21, 1904	112 97	1,900,142 16	16,820				
Carrollton to Irving			April 22, 1908	10 82	342,557 45	31,660				
Amarillo to State Line near Glen Rio			June 7, 1911	69 89	1,277,321 22	18,276				
Total				465 79	10,138,357 95	21,766	3,313,009 41	13,451,367 36	168 34	28,721
Concho, San Saba & Llano Valley	(*G. C. & S. F.*)	*	June 30, 1913	59 46	849,134 67	14,281	1,776 02	853,910 69	59 65	14,315

Dallas, Cleburne & Southwestern	(M. K. & T.)	†	May 31, 1909		9.82	160,348 74	16,329	1,381 16	164,729 90		9 82	16,775
Dallas Terminal and Union Depot	(St. L. S. W.)		April 13, 1905	a	5 82	741,094 13	127,326	225,392 49	966,486 53	a	11 54	83,751
Dayton-Goose Creek		*	Dec. 31, 1918		22 90	388,941 60	16,981	121,103 39	510,044 99		25 40	20,080
Denison & Pacific Suburban	(T. & P.)	*	June 30, 1907		7 63	200,000 00	26,211	27,995 71	227,995 71		7 85	29,044
Denison, Bonham & New Orleans	(M. K. & T.)		Feb. 5, 1903		24.17	375,265 65	15,522	11,613 61	386,879 26		24 15	16,019
East Texas & Gulf		*	Dec. 31, 1917		9 60	34,369 02	3,580	23,475 06	57,844 08		9 60	6,025
Eastern Texas	(St. L. S. W.)		Aug. 11, 1903		30 30	454,527 73	15,001	3,520 91	458,048 64		30 30	15,117
El Paso & Northeastern	(E. P. & S. W.)		July 11, 1905		19 32	542,910 74	28,101	293,780 97	842,691 71		19 22	13,845
El Paso & Southwestern of Texas			July 11, 1905		4 69	903,991 31	192,749	1,606,602 28	2,510,596 59		1 69	535,308
El Paso Southern		*†	June 30, 1915		2 46	49,575 41	20,153	19 10	49,624 51		2 46	20,173
Fort Worth & Denver City			April 1891		454.14	5,771,582 42	12,709	6,939,380 82	12,710,963 24		454 14	27,989
Fort Worth & Denver Terminal		†	Feb. 11, 1908	a	13 75	743,111 12	54,044	54,041 37	797,152 49	a	13 79	57,806
Fort Worth & Rio Grande	(St. L. S. F. & T.)		July 24, 1895		143 57	2,003,839 32	13,957					
Brownwood to Brady			Oct. 11, 1904		49 72	1,058,925 36	21,208					
Brady to Menard			June 20, 1911		28 48	636,312 35	22,342					
Total					221.77	3,699,077 03	16,685	243,224 03	3,942,301 06		223 41	17,644
Fort Worth Belt			Aug. 15, 1901	a	11.60	296,307 84	25,554					
Additions and betterments		*	Oct. 31, 1915	a	6 48	107,766 24	16,631					
Total		*b		a	18 08	401,074 08	22,349	D 11,926 09	389,147 99	a	18 09	21,512
Fredericksburg & Northern			Aug. 12, 1914		23 37	360,070 72	15,407	D 221,176 53	138,894 19		23 40	5,936
Galveston, Harrisburg & San Antonio	(So. Pac.)		Jan. 21, 1911		904 75	16,033,682 23	17,222					
Galveston-Victoria Division			Jan. 21, 1911		431 53	9,023,411 27	20,910					
Seabrook Extension		*	June 30, 1915		12.80	170,350 51	13,309					
Total		b			1,349.08	25,227,447 01	18,670	10,605,476 19	35,832,923 50		1,377 21	26,018
Galveston, Houston & Henderson			Mar. 9, 1911		48 85	3,085,011 26	63,153	131,893 37	3,216,904 63		47 33	67,967
Galveston Terminal	(T. & B. C.)	c	June 10, 1908	a	21 63	1,130,881 54	45,915	D 2,136 93	1,128,744 61	a	23 83	47,367
Galveston Wharf		c	Nov. 30, 1911	a	41 03	10,275,955 89	250,450	1,208,637 46	11,484,593 35	a	16 81	245,315
Greenville & Northwestern		†	Nov. 5, 1914		11 84	133,808 39	11,311		133,808 39		11 83	11,311
Groveton, Lufkin & Northern			May 20, 1909		21 18	487,487 48	23,016	D 16,752 31	470,735 17		21 15	22,257
Gulf & Interstate of Texas	(G. C. & S. F.)	*	June 30, 1905		70 24	936,161 70	13,328	D 121,000 69	815,161 01		70 31	11,594
Gulf & Northern			April 1, 1910		14.81	409,288 20	27,636	23,183 56	432,471 76		14 82	27,636
Gulf, Beaumont & Great Northern	(G. C. & S. F.)		Feb. 17, 1906		77.81	1,482,261 10	19,050	327,270 89	1,809,531 99		77 78	23,265
Gulf, Beaumont & Kansas City	(G. C. & S. F.)		Aug. 13, 1895		52.75	567,495 95	10,758					
Kirbyville to Rogan			Oct. 15, 1902		9 93	108,988 91	10,976					
Total					62.68	676,484 86	10,793	1,318,824 89	2,025,309 75		62 59	32,358

TABLE NO. 1—Continued.

Summary of Valuations of Railroads as Ascertained by the Railroad Commission of Texas under Requirements of Article 6719, Revised Civil Statutes of Texas, 1911, up to December 31, 1919, Including Additions and Betterments, as Reported to the Commission Since Original Valuations and to December 31, 1919.

(The words "The," "Railroad," "Railway" and "Company," omitted.) Name of Railroad	1 Date of original valuation or book cost.	2 Mileage.	3 Amount of original valuation or book cost.	4 Average per mile.	5 Total additions and betterments since original or latest valuation (see note).	6 Total valuation to Dec. 31, 1918, including additions and betterments	7 Mileage, including additions.	8 Average per mile of total valuation Column 6.
Gulf, Colorado & Santa Fe	May 11, 1895	957 74	16,415,718 48	17,140				
Texas, Louisiana & Eastern	Aug. 15, 1895	29 60	234,027 23	7,906				
Sillsbee Extension and Sillsbee Branch	July 11, 1905	59 43	1,286,285 11	21,641				
Lometa Extension	June 30, 1917	98 18	3,128,419 69	31,861				
Additions and Betterments	June 30, 1917		14,102,287 83					
Total		1,144 95	35,166,738 34	30,715	995,303 74	36,162,042 08	1,144 77	31,589
Gulf, Texas & Western	July 28, 1911	75 25	1,851,602 04	24,606				
Jacksboro to Salesville	July 28, 1911	23 23	411,105 35	17,796				
Total		98 48	2,262,707 39	23,976	78,897 13	2,341,604 52	99 10	23,629
Houston & Brazos Valley (*M. K. & T.*)	Oct. 27, 1910	20 20	444,067 09	21,984	538,465 85	982,532 94	28 40	34,596
Houston & Texas Central (*So. Pac.*)	Aug. 14, 1891	452 60	9,588,903 28	21,186				
Austin & Northwestern	Aug. 4, 1891	105 96	1,753,694 22	16,551				
Fort Worth & New Orleans	May 18, 1895	41 26	573,086 66	13,890				
Central Texas & Northwestern	June 17, 1895	12 36	212,110 50	17,161				
Hearne & Brazos Valley	Aug. 12, 1895	16 12	106,641 75	6,495				
Waco & Northwestern	Oct. 29, 1900	54 84	1,101,477 64	20,110				
Lampasas Branch	Oct. 15, 1903	23 01	451,562 01	19,625				
Mexia Junction to Nelleva Junction	May 9, 1910	91 06	2,383,017 76	25,335				
Giddings-Stone City Extension	* Mar. 31, 1915	39 27	1,416,202 71	36,063				
Stella Extension	* June 30, 1915	9 54	284,661 46	29,933				
Total [b]		849 29	17,871,360 99	21,046	3,705,680 89	21,589,041 88	856 40	25,199
Houston Belt & Terminal	Oct. 24, 1912 [a]	54 89	5,068,690 67	92,343	46,911 01	5,115,601 68 [a]	49 41	103,534
Houston East & West Texas (*So. Pac.*)	June 10, 1895	190.94	2,012,692 36	10,698	748,062 41	2,790,754 77	190 94	14,615
International & Great Northern	July 15, 1911	1,106 09	32,171,027 05	29,359	3,131,284 25	35,602,311 30	1,107 38	32,150
Jasper & Eastern (*G. C. & S. F.*)	* June 30, 1907	17.46	371,110 05	21,127	33,607 18	107,717 23	17 45	24,365
Jefferson & Northwestern	* June 30, 1911	38.36	205,459 50	5,356	119,187 50	324,647 00	41 19	7,882
Kansas City, Mexico & Orient of Texas	[b] June 30, 1913	464.69	7,247,378 53	15,596				

Kansas City, Mexico & Orient of Texas		b	June 30, 1913	464.69	7,247,278 53	15,596		602,471 83	7,849,750 36	465 75	16,854
Lufkin, Hemphill & Gulf		*	Dec. 31, 1916	12 30	137,763 85	11,200		58,089 29	195,853 14	12 20	16,054
Marshall & East Texas		†	Sept. 28, 1912	91 32	1,380,075 91	15,113	D	394,939 36	985,136 55	91 32	10,788
Midland & Northwestern		*†	Dec. 31, 1917	47 50	299,576 63	6,307		210,992 32	510,568 95	65 14	7,838
Missouri, Kansas & Texas of Texas			June 15, 1894	841 51	13,437,440 80	15,968					
Sherman, Shreveport & Southern			May 9, 1895	152 90	1,609,046 80	10,521					
Denison & Washita Valley			Oct. 14, 1896	6 40	245,320 22	38,331					
Waskom and San Antonio Extensions			Sept. 10, 1901	75 49	1,396,694 17	18,502					
Austin Branch			Mar. 10, 1905	45 40	906,277 18	19,962					
Total				1,121 70	17,591,779 17	15,686		13,803,181 62	31,397,960 79	1,118 61	28,069
Missouri, Oklahoma & Gulf		*	Sept. 18, 1911	9 00	362,004 95	40,223	D	39,936 18	322,068 47	9 10	35,392
Moscow, Camden & San Augustine		*†	June 30, 1902	7 00	30,607 83	4,375		11,029 16	41,636 99	7 00	6,377
Motley County		†	Aug. 1, 1918	8 07	124,785 57	15,463			124,785 57	8 07	15,463
Nacogdoches & Southeastern		*	June 30, 1910	14 00	238,516 55	17,037	D	10,154 98	228,361 57	14 00	16,312
Orange & Northwestern	(*St. L. B. & M.*)		Oct. 13, 1910	61 55	1,128,496 51	18,335		6,215 67	1,134,712 18	61 55	18,436
Panhandle & Santa Fe			July 22, 1895	100 50	1,090,593 75	10,842					
Panhandle to Amarillo			July 31, 1917	24 93	711,777 36	28,551					
Additions and Betterments			June 30, 1917		3,058,647 31						
Total				125 43	4,861,018 42	38,755		419,849 97	5,280,868 39	124 92	42,274
Paris & Great Northern	(*St. L. S. F. & T.*)		July 25, 1895	16 94	288,718 32	17,035		225,347 21	514,065 53	16 94	30,346
Paris & Mt. Pleasant			Aug. 1, 1912	21 07	379,592 12	15,770					
Bogata to Mt. Pleasant			June 27, 1913	27 26	513,101 21	18,822					
Total				51 33	892,693 33	17,391	D	11,322 11	881,370 92	51 43	17,137
Pecos & Northern Texas	(*P. & S. F.*)		Mar. 25, 1913	94 19	2,382,213 36	25,292					
Canyon City to Plainview			Mar. 25, 1913	57 32	646,086 94	11,272					
Lubbock to Coleman			Nov. 30, 1912	203 23	8,702,513 75	42,821					
Plainview to Floydada			Nov. 30, 1912	26 75	389,622 75	14,565					
Plainview to Lubbock			Nov. 30, 1912	45 35	620,841 31	13,690					
Slaton to Lamesa			Nov. 30, 1912	54 32	806,602 48	14,849					
Lubbock-Farwell Extension		*	June 30, 1915	88 26	1,551,234 69	17,576					
Total				569.42	15,099,115 28	26,518		1,817,270 98	16,916,386 26	570 71	29,641
Pecos River	(*P. & S. F.*)		Feb. 23, 1894	54 13	392,404 65	7,249		59,238 02	451,642 67	54 24	8,327
Pecos Valley Southern			Nov. 11, 1911	40 27	493,385 39	12,252		17,353 56	510,738 95	40 40	12,642
Port Arthur Canal & Dock Co.	(*T. & Ft. S.*)	c*	June 30, 1915	a 2.67	3,019,032 31	1,130,792		18,368 71	3,037,401 02	2 67	1,137,603
Port Bolivar & Iron Ore	(*G. C. & S. F.*)	‡	April 30, 1912	29 67	862,566 40	29,072		67,174 31	929,740 71	29.66	31,347

TABLE NO. 1—Continued.

Summary of Valuations of Railroads as Ascertained by the Railroad Commission of Texas under Requirements of Article 6719, Revised Civil Statutes of Texas, 1911, up to December 31, 1919, Including Additions and Betterments, as Reported to the Commission since Original Valuations and to December 31, 1919.

Name of Railroad. (The words "The," "Railroad," "Railway" and "Company," omitted.)	1 Date of original valuation or book cost.	2 Mileage.	3 Amount of original valuation or book cost.	4 Average per mile.	5 Total additions and betterments since original or latest valuation (see note).	6 Total valuation to Dec. 31, 1918, including additions and betterments.	7 Mileage including additions.	8 Average per mile of total valuation Column 6.
Quanah, Acme & Pacific	Dec. 19, 1913	39 29	1,078,903 76	27,460				
Paducah to McBain	Dec. 19, 1913	40 00	950,032 34	23,750				
Total		79 29	2,028,936 10	25,589	106,740 86	1,922,195 24	75 92	24,356
Rio Grande	March 1, 1919	22 50	305,130 40	13,575		305,130 40	22 50	13,575
Rio Grande & Eagle Pass	Aug. 14, 1895	27 00	231,695 11	8,692				
Dolores Extension	*June 30, 1915	33	4,423 77	13,405				
Total	b	27.33	239,118 88	8,749	317,871 12	556,990 00	28 44	19,585
Rio Grande, El Paso & Santa Fe (P. & S. F.)	July 9, 1895	20 17	181,821 33	23,888	165,564 07	647,388 40	20 22	32,017
Riveria Beach & Western	†July 21, 1913	9 86	118,525 99	12,021	6,045 50	124,571 49	9 86	12,634
Roby & Northern	**†June 30, 1916	4 32	54,830 59	12,692		54,830 59	4 32	12,692
Roscoe, Snyder & Pacific	Mar. 26, 1910	49 72	723,173 41	14,545	29,862 23	753,035 64	49 77	15,130
St. Louis, Brownsville & Mexico	June 2, 1913	504 03	13,504,535 39	26,793	2,146,113 01	15,650,918 40	502 24	31,162
St. Louis, San Francisco & Texas	Nov. 21, 1901	6 74	407,454 14	60,453				
Red River, Texas & Southern	Mar. 26, 1903	57 46	1,215,331 67	21,151				
Blackwell, Enid & Texas	June 30, 1901	12 77	192,843 01	15,101				
Oklahoma City & Texas	June 30, 1904	8 68	183,997 77	21,198				
Total		85 65	1,999,626 59	23,346	801,975 48	2,801,602 07	85 32	32,872
St. Louis Southwestern of Texas	Nov. 17, 1891	552 17	8,862,293 18	16,059				
Tyler Southeastern	Dec. 6, 1891	88 60	914,748 98	10,324				
Dallas Branch	May 21, 1903	12 13	280,846 70	23,153				
Texas & Louisiana	July 28, 1901	26 78	292,207 86	10,915				
Lufkin Branch	*June 30, 1908	15.53	186,360 00	12,000				
Total	b	695.21	10,536,546 72	15,156	11,202,332 64	21,738,879 35	694 95	31,281

San Antonio & Aransas Pass			May 21, 1894		686.77	8,677,698 37	12,619					
Alice to Falfurrias			April 8, 1905		36.65	339,725 20	9,269					
Total					724.32	9,017,423 57	12,450	1,978,654 13	13,996,077 70	727.67	19,234
San Antonio Belt & Terminal	(*M. K. & T.*)		Feb. 28, 1917	a	7.31	1,695,296 40	231,913	1,340,939 19	3,036,235 59	7.31	115,354
San Antonio, Uvalde & Gulf			May 26, 1913		197 22	3,093,984 23	15,685				
Pleasanton Jct. to Nueces River			July 7, 1914		73 80	1,104,891 53	19,036				
Nueces River to Corpus Christi			July 7, 1914		43.50	625,137 77	14,378				
Entire Line			Mar. 31, 1916			278,107 39					
Total					314 52	5,102,120 92	17,175	166,362 85	5,568,983 77	314 52	17,706
San Benito & Rio Grande Valley			June 21, 1913		63 16	1,024,691 58	16,221	5,036 13	1,029,727 71	64 99	15,811
Santa Fe Dock & Channel Co.	(*G. C. & S. F.*)	c*	June 30, 1915	a	4 74	857,303 33	180,865	4,556 10	861,859 43	4 75	181,441
Shreveport, Houston & Gulf		*	June 30, 1912		9 00	105,770 35	11,732	D 28,940 91	76,829 44	9 00	8,537
Southern Pacific Terminal	(*So. Pac.*)	c*	June 30, 1915	a	23 64	2,637,515 46	111,570	D 57,685 64	2,579,829 82	25 68	100,460
Southplains & Santa Fe	(*P. & S. F.*)	*	June 30, 1912		38 82	551,323 36	14,202	1,276,254 73	1,827,578 09	102 31	17,883
Southwestern		†	Feb. 22, 1911		29 09	389,905 10	13,403	2,589 04	392,494 14	29 09	13,492
Stamford & Northwestern	(*Ft. W. & D. C.*)		Feb. 15, 1910		82 50	1,955,380 75	23,702	D 40,098 00	1,915,282 75	82 50	23,215
Stephenville, North & South Texas	(*St. L. S. W.*)		Aug. 19, 1913		105 76	2,746,163 68	25,966	39,055 82	2,785,219 50	105 73	26,342
Sugar Land			June 18, 1912		32 72	493,837 41	15,093	150,950 06	644,787 47	38.94	16,558
Texarkana & Ft. Smith			July 25, 1901		79 11	1,603,788 56	20,273	1,947,820 67	3,551,609 23	79 11	14,891
Texas & Gulf	(*G. C. & S. F.*)		Aug. 12, 1895		38 41	398,848 40	10,384	281,006 20	682,854 60	94 56	7,221
Texas & New Orleans	(*So. Pac.*)		Dec. 12, 1894		104 37	3,619,695 89	31,684				
Sabine & East Texas			Oct. 17, 1894		102 76	896,565 73	8,725				
Louisiana Western Extension			Oct. 21, 1894		6 81	109,551 18	16,087				
Texas Transportation			Dec. 18, 1894		7 84	154,951 16	19,764				
Dallas Division			Sept. 3, 1903		210 95	3,887,031 47	18,426				
Sour Lake Branch			May 16, 1905		8 33	245,619 60	29,487				
Burr's Ferry, Browndell & Chester			Nov. 14, 1907		11 12	176,340 35	15,858				
Port Arthur Branch		*	June 30, 1908		3.41	136,226 04	39,949				
Rusk Branch		*	June 30, 1910		7.75	153,572 01	19,816				
Total		b			463 34	9,379,553 43	20,243	3,515,358 75	12,894,912 18	463.74	27,893
Texas Pacific			Mar. 31, 1894		1,039.48	17,730,689 31	17,057	23,897,863 40	41,628,552 71	1,038 53	10,081
Texas, Arkansas & Louisiana		**	June 30, 1912		7 70	26,495 38	3,441		26,495 38	7 70	3,441
Texas Central	(*M. K. & T.*)		May 6, 1911		309 01	6,059,355 58	19,609	355,586 12	6,414,941 70	308 72	20,773
Texas City Transportation			June 20, 1916	a	35 78	4,920,088 84	137,509	901 03	4,920,989 87	35 84	137,391
Texas Mexican			Feb. 12, 1896		161 65	1,457,638 32	9,017	580,186 57	2,037,824 89	161 85	12,591
Texas Midland			July 8, 1895		73 58	940,910 07	12,788				
Commerce to Paris			July 25, 1901		37.60	973,667 56	25,895				
Ennis to Paris			July 25, 1901			198,053 52					
Total					111 18	2,112,631 15	19,002	418,986 90	2,531,618 05	111 18	22,770

TABLE NO. 1—Continued.

Summary of Valuations of Railroads as Ascertained by the Railroad Commission of Texas under Requirements of Article 6719, Revised Civil Statutes of Texas, 1911, up to December 31, 1919, Including Additions and Betterments, as Reported to the Commission since Original Valuations and to December 31, 1919.

Name of Railroad. (The words "The," "Railroad," "Railway" and "Company," omitted.)		1 Date of original valuation or book cost	2 Mileage.	3 Amount of original valuation or book cost.	4 Average per mile.	5 Total additions and betterments since original or latest valuation (see note).	6 Total valuation to Dec. 31, 1918, including additions and betterments	7 Mileage, including additions.	8 Average per mile of total valuation Column 6.
Texas Short Line		Mar. 14, 1904	9 36	185,093 67	19,775	112,149 38	297,243 05	12 85	23,132
Texas Southeastern		Oct. 4, 1909	27 07	536,393 74	19,815	D 201,429 09	334,964 65	20 15	16,624
Texas State		Feb. 11, 1911	32 56	509,061 51	15,464	63,523 07	572,584 58	32 56	17,586
Timpson & Henderson		Aug. 5, 1910	33 61	400,850 54	11,926	17,311 45	418,161 99	34 09	12,269
Trinity & Brazos Valley		April 24, 1908	302 82	9,064,111 28	29,932	2,328,557 85	11,392,669 13	302 82	37,624
Trinity Valley & Northern		*June 30, 1912	18 00	127,378 17	7,077	D 7,309 82	120,068 35	18 00	6,670
Trinity Valley Southern		*June 30, 1912	6 00	23,500 00	3,917	D 3,150 28	20,349 72	6 00	3,342
Union Terminal (Dallas)		*May 31, 1916	a 4 83	5,815,362 96	120,400	615,898 60	6,131,261 56	a 4 81	1,328,773
Weatherford, Mineral Wells & Northwestern	(T. & P.)	June 27, 1895	23 00	327,495 84	14,239				
Mineral Wells to Grayford		Jan. 18, 1908	20 64	425,741 52	20,627				
Total			43 64	753,237 36	17,260	61,677 16	814,914 52	43 64	18,674
Wichita Falls	(M. K. & T.)	May 29, 1895	17 96	242,837 50	13,521	300,759 13	543,596 63	17 98	30,233
Wichita Falls & Northwestern of Texas	(M. K. & T.)	Sept. 8, 1907	16 97	268,651 58	15,831				
Wichita Falls & Northwestern		Oct. 20, 1908		2,901 85					
Total			16 97	271,553 43	16,002	604,916 89	876,470 32	17 10	51,256
Wichita Falls & Oklahoma	(Ft. W. & D. C.)	Dec. 18, 1906	22 10	245,560 13	11,111				
Wichita Falls & Oklahoma		Jan. 15, 1908		34,440 00					
Total			22 10	280,000 13	12,670	163 63	280,163 76	22 80	12,288
Wichita Falls & Southern	(M. K. & T.)	† Mar. 29, 1910	52 36	871,405 90	16,642	D 10,230 18	861,175 72	52 36	16,446
Wichita Falls & Wellington of Texas	(M. K. & T.)	† Sept. 28, 1910	15 00	302,585 52	20,172	762 75	303,348 27	15 00	20,223
Wichita Valley Railroad	(Ft. W. & D. C.)	Jan. 15, 1908	60 81	801,640 18	13,232	13,971 11	818,611 29	60 70	13,486
Wichita Valley Railway	(Ft. W. & D. C.)	April 23, 1891	51 36	486,768 26	9,478	136,968 96	623,737 22	52 20	11,949
Totals: Original valuations			15,079 82	$ 317,505,981 80	$ 21,055				
Book cost		*	628 18	14,785,943 86	23,538				
Grand total			15,708 00	$ 332,291,025 75	$ 21,154	$109,296,186 17	$ 441,587,511 92	15,911 98	$ 27,752
Total, Dock Companies, not included in above		c	100 63	$ 18,100,169 77	$179,869	$ 1,197,349 02	$ 19,297,518 79	108 87	$ 177,252

NOTES.

The basis of original, or first, valuations of carriers is that of cost of reproduction of the property as of date valuation is made. Subsequent valuations are made up by taking original valuation and adding thereto additions to Capital Cost through Additions and Betterments to the property. New mileage or any extension of existing lines, is valued on basis of reproduction cost. In order to arrive at, at least approximate, present day values of all lines in the State the Commission called for statements from all carriers of Additions and Betterments included in Property Accounts since date of original appraisements. The net additions, including six per cent Franchise Value, based upon returns made to the Commission, appear in Column 5 above. These returns have been used as given but have not in all cases been verified by the Commission by examination and check of the railway company's records. In cases where no original valuation has been made by the Commission the returns of carriers as to Book Cost of entire property have been included in Column 3 above. Such returns, as in case of Column 5 have not as yet been checked and verified. Column 2 is mileage originally valued; Column 7 is mileage reported December 31, 1919, including additions and extensions and deducting property abandoned, taken up, or written off, as well as accrued depreciation.

*—Book Cost appears in Column 3, and when date in Column 1 is other than June 30 or December 31 this Book Cost has been verified and authorized.

†—No Additions or Betterments included for year 1919, on account of failure to render reports in form prescribed and statutory.

a—Includes Yards, Tracks and Sidings.

b—Includes Book Cost of extensions not yet valued.

c—Dock companies, not included in grand total.

D—Indicates decrease.

State of Texas,
County of Travis.

This is to certify that the foregoing words and figures, additions and calculations, is a true and correct copy of Table No. 1 of Exhibit No. 4 as same appears in twenty-ninth annual report of the Railroad Commission of Texas for the year 1919.

Witness my hand this the 17th day of May, A. D. 1921.

L. A. GUERINGER,
Engineer.

EXHIBIT NO. 2.

CONSTITUTION OF THE STATE OF TEXAS, 1876.

ARTICLE I, SECTIONS 3, 17, 19 AND 26.

SEC. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

* * * * * * * * * *

SEC. 17. No person's property shall be taken, damaged or destroyed for, or applied to, public use without adequate compensation being made, unless by the consent of such person; and when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature or created under its authority, shall be subject to the control thereof.

* * * * * * * * * *

SEC. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

* * * * * * * * * *

SEC. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

* * * * * * * * * *

ARTICLE IV, SECTION 22.

SEC. 22. The Attorney General shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power, or demanding or collecting any

species of taxes, toll, freight or wharfage, not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; provided, that the fees which he may receive shall not amount to more than two thousand dollars annually.

ARTICLE X, SECTIONS 1 TO 10, EXCLUSIVE OF 7.

Section 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

Sec. 2. Railroads heretofore constructed, or which may hereafter be constructed, in this State are hereby declared public highways, and railroad companies common carriers. The Legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and, to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Sec. 2, Art. 10, adopted election November 4, 1890; proclamation December 19, 1890.)

Sec. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock,

the amounts owned by them, respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously; and the president or superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

Sec. 4. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property; and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

Sec. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Sec. 6. No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

* * * * * * * * * *

Sec. 8. No railroad corporation, in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Sec. 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat, without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens

shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

Article XII, Sections 1 to 7.

Section 1. No private corporation shall be created except by general laws.

Sec. 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

Sec. 3. The right to authorize and regulate freights, tolls, wharfage or fares, levied and collected, or proposed to be levied and collected by individuals, companies or corporations, for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority.

Sec. 4. The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Sec. 5. All laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

Sec. 6 No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

Sec. 7. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this State, or of the Republic of Texas.

Article XIV, Section 3.

Sec. 3. The Legislature shall have no power to grant any of the lands of this State to any railway company, except upon the following restrictions and conditions:

First. That there shall never be granted to any such corporation more than sixteen sections to the mile; and no reservation of

any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company until they have equipped, constructed and in running order at least ten miles of road; and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. The Legislature shall pass general laws only to give effect to the provisions of this section.

Article XVI, Sections 25, 48.

Sec. 25. That all drawbacks and rebatements of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner thereof, are forever prohibited; and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

* * * * * * * * * *

Sec. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

EXHIBIT NO. 3.

TITLE 115, CHAPTER III.

ARTICLES 6423, 6424, 6425, 6429, 6430, 6431, 6432, 6453, 6434, 6435 AND 6436 OF THE REVISED CIVIL STATUTES OF THE STATE OF TEXAS OF 1911.

Art. 6423. (4367) *Shall keep offices in this State.*—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within the State of Texas at the place named in its charter for the locating of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it shall have contracted or agreed, or shall hereafter contract or agree, to locate its general office for a valuable consideration; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its general office at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad companies may designate to be on its line of railway. Any such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and, if said general offices and shops and roundhouses, or either, are located on the line of a railroad in a county which has aided said railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. (Acts 1889, p. 130, Sec. 1.)

Art. 6424. (4368) *What officers are to keep offices in this State.*—It shall be the duty of said railroad company to keep and maintain at the place within this State where its said general offices are located the office of its president, or vice-president, also the office of its secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer,

superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each and every one of its general offices shall be so kept and maintained, by whatsoever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where the said general offices are required to be located and maintained; and the persons holding said general offices of a railroad shall reside at the place and keep and maintain their offices at the place where the general offices of said railroad are required by law to be kept and maintained; and, if the duties of any of the above named offices are performed by any person, but his position is called by a different name, it is hereby made the duty of the said railroad company to have and maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter; provided, that if the judgment of the court shall be to forfeit the charter, then it shall allow the railroad company six months from the date of the judgment within which to comply with the requirements of this chapter, and if said railroad company shall comply with the said time no forfeiture shall occur; but if the railroad company shall not comply, then the judgment shall be final; the object and meaning of this statute being to require every railroad company owning or operating a line of railway within this State to keep and maintain its general offices within this State at such place as required herein; and the name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one it is required to keep its general offices at; and each and every railroad is hereby required to have and maintain its general offices at the place named herein; provided, further, that where the principal shops of any company are situated on its line in the State, at a place other than the place where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; and provided, further, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may, by an order entered

on its record, authorize any such officer to so reside and keep his office at such place. (Acts 1889, p. 130, Sec. 2; amended Acts 1899, p. 117.)

Art. 6425. (4369) *Forfeiture for violation of, etc.*—Each and every railroad company chartered by this State, or owning, operating or controlling any line of railroad within this State, which shall violate any of the provisions of this chapter shall forfeit the charter by which it operates its railroad in this State to the State of Texas; and it is hereby made the duty of the Attorney General of this State, upon the application of any interested party, or on his own motion, to proceed at once against every railroad company owning, operating or controlling any line of railway within this State by quo warranto to forfeit the charter of the railroad company so offending, or violating any of the provisions of this law; (and every such railroad company) shall, in addition to forfeiting the charter to that part of the railroad situated within this State be subject to a penalty of five thousand dollars for each and every day it violates any of the provisions of this chapter; said penalty to be recovered in the name of the State of Texas by a suit which shall be filed by the Attorney General in any court in this State having jurisdiction; and on the trial the court shall, if it finds that the railroad company has violated any of the provisions of this chapter, render judgment in the name of the State of Texas at the rate of the sum of five thousand dollars for each and every day said court shall find that said railroad company violated any of the provisions of this chapter. And any money recovered from any railroad company under the provisions of this law shall be paid over into the State Treasury and become a part of the available public free school fund. (Id., Sec. 3.)

* * * * * * * * * *

Art. 6429. (4370) *What books shall contain; open to inspection, etc.*—At the public or general offices of the said railroad companies, established as provided for in this chapter, the principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted by duly authorized officers and agents of said corporations, and where there shall be kept for the inspection of stockholders of such corporation books, in which shall be recorded:

1. The amount of capital stock subscribed.

2. The names of the owners of the stock and the amounts owned by them, respectively.

3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers.

Provided, that railroad cororations shall be required to keep such office at some place on the line of its road in this State, as heretofore provided. (Acts 1885, p. 67.)

Art. 6430. (4371) *President shall report, etc.*—The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such other matters and things as may be inquired about by said Comptroller or Governor. (Id., Sec. 3; Const., Art. 10, Sec. 3.)

Art. 6431. (4372) *Books to be kept where.*—The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. (Id., Sec. 4.)

Art. 6432. (4373) *Legislature may examine.*—The Legislature may, by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said Legislature be deemed necessary. (Id., Sec. 5.)

Art. 6433. (4374) *Penalty for failure, etc.*—It shall be unlawful for any railroad or other corporation to fail or refuse to comply with any of the provisions of this chapter; and, if said railroad or other corporation shall fail or refuse to comply with any part thereof, it shall be liable to pay to the State of Texas the sum of one thousand dollars for each and every month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State in any court in the State of competent jurisdiction; provided, that an honest mistake in the entries in its books shall not subject a railroad company to the penalties of this article, if the office of said company shall be kept in this State, as herein provided. (Id., Sec. 6.)

Art. 6434. (4375) *Duties of Attorney General.*—It shall be the duty of the Attorney General of this State to bring suit against said corporations, and prosecute them to judgment for any violation of the provisions of this chapter. (Id., Sec. 7.)

"Art. 6435. (4376) *Change of location of general offices, etc., prohibited; application to receivers and purchasers.*—No railroad corporation shall have the right in the future to change the loca-

tion of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns, provided, however, that the Railroad Commission of Texas shall not consent to, or approve of, any removal or change of location, in conflict with the restrictions of Article 6423 of the Revised Civil Statutes of Texas of 1911; and, provided further, that no consent or approval of the Railroad Commission of Texas shall be required before the return of general offices, machine shops or roundhouses to previous locations when ordered or required under judgments in suits now pending in trial or appellate courts. (Act Feb. 7, 1854; P. D. 4888; Acts 1915, Chap. 20, Sec. 1.)

Art. 6436. (4377) (4119) *Notice of establishment of public office, in first instance, shall be given.*—Every railroad corporation shall also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

TITLE 115. CHAPTER VI.

Articles 6467, 6469, 6470 and 6471.

Art. 6467. (4408) (4152) *Stockholders may fix amount of loans and interest thereon.*—At a regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. (Id.)

* * * * * * * * * *

Art. 6469. (4410) (4154) *No stock shall be issued, except, etc.*—No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. (Id., p. 148, Sec. 25; P. D. 4921.)

Art. 6470. (4411) (4155) *Fictitious dividends, etc., void.*—All fictitious dividends and other fictitious increase of the capital

stock or indebtedness of any such corporation shall be void. (Id.)

Art. 6471. (4412) (4156) *Penalty for violation of two preceding articles.*—Every officer or director of a railroad company who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness, as the case may be. (P. D. 4921.)

TITLE 115. CHAPTER VIII.

Article 6482.

Art. 6482. (4423) (4167) *Right of way over public lands.*—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

TITLE 115. CHAPTER IX.

Articles 6548a, 6548b, 6548c, 6548d and 6548e.

Art. 6548a. *Abandonment, change, or relocation of line; petition; order.*—When any railroad in this State, whether incorporated under State or Federal charter, desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within any incorporated city of 50,000 or more inhabitants of his State according to the United States census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new or relocated line, with the reasons justifying the same; thereupon the Railroad Commission of Texas shall set aside said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspapers of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing the Railroad Commission of Texas shall be of opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation

or abandonment; provided, that nothing contained herein shall be construed to authorize he Railroad Commission of Texas to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, that the Railroad Commission of Texas shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the county commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to the Railroad Commission of Texas. (Acts 1918, 4th C. S., Chap. 27, Sec. 1.)

Art. 6548b. *Same subject.*—When any railroad corporation or receivers of any railroad of the State desire to change, relocate or abandon any part of its line within any incorporated city containing 50,000 or more inhabitants according to the United States census, it shall present its petition therefor to the governing legislative authority of such city said petition to be also supported by the names of not less than five hundred resident citizens, who shall be property owners in said city, showing the reasons therefor and the part of the line sought to be changed, relocated or abandoned, the new location, or arrangements proposed for operation; whereupon such governing legislative authority if of opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. That thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon the Railroad Commission of Texas shall set down such application for public hearing upon not less than ten days notice, and if upon such hearing the Railroad Commission of Texas shall be of opinion that the public interest will be conserved by the granting of such

petition, it shall enter its order to that effect and thereupon said railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. Providing that no application to alter, change or relocate railway tracks, as contemplated by this section, shall be acted upon by the governing legislative authority of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body, and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon. (Id., Sec. 2.)

Art. 6548c. *Same subject; power of eminent domain.*—When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this act, to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for rights of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purpose connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as same may be necessary. (Id., Sec. 3.)

Art. 6548d. *Same subject; certain acts validated.*—All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a population according to the United States census of 50,000 inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made under the provisions of this act, and such permission or written order of the Railroad Commission of this State, given prior hereto, shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this act shall not affect any right or rights for damages that any person, firm or corporation may now have, may have had or may have in the future for damages caused by any such removal, change or abandonment. (Id., Sec. 4.)

Art. 6548e. *Same subject; hearing of application.*—Whenever the governing authority of any city containing 50,000 inhabitants or more shall present to the Railroad Commission of this State

its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to better serve the public interest, said Railroad Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of the Railroad Commission such change or relocation would be to the best interest of all parties concerned. Provided, that no application to alter, change or relocate railway tracks, as contemplated by this section, shall be determined upon by the governing legislative authority of such city until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of the said city. (Id., Sec. 6.)

TITLE 115, CHAPTER X.

Articles 6652, 6604, 6605, 6606 and 6618.

Art. 6552. (4494) (4226) *Trains to be regular, and notice to be given.*—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and prvileges and such abuse shall be at once corrected and regulated by the Railroad Commission. Provided further, that no railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad, or any part thereof, and in case any railroad corporation, manager or receiver has now or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver

to at once resume operation of its trains over said road, or part thereof, in accordance with the orders, rules and regulations of the Railroad Commission.

Provided further, that if any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General of the State of Texas, who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of any county through which said railroad may pass, or of Travis County, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this article, and if it shall be determined by the court that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this article, and the said receiver shall have had no connection, directly or indirectly, with said railroad corporation, manager or receiver prior to the time of his appointment, but who shall be a good business man well qualified to perform the duties of said receiver.

"Provided further, that said receiver shall collect freight and passenger rates as prescribed by the Railroad Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as may be prescribed by the decree of the court all of his acts as such receiver. (P. D. 1893; amended Acts 1903, 1 S. S., p. 21; Acts 1918, 4th C. S., Chap. 88, Sec. 1.)

Art. 6604. (4529) *Consolidation prevented.*—It shall be unlawful for any railroad corporation, or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, poperty, works or franchises of such corporation with or lease or purchase the stock, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act as or become an officer, agent, manager, lessee or purchaser of any other railroad corporation in leasing or purchasing any parallel or competing line. (Acts 1887, p. 137; P. C., Arts. 419-422.)

Art. 6605. (4530) *Corporation defined.*—Railroad corporation, or other corporation, as used in the preceding article, is declared to mean any corporation, company, person or association of persons who own or control, manage or operate any line of railroad in this State. (Id., Sec. 3.)

Art. 6606. (4531) (4247) *Consolidation, etc.*—No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States.

Art. 6618. (4542) *Passenger fare three cents per mile.*—The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; and provided, further, that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. (Acts 1883, p. 70, Sec. 9.)

TITLE 115, CHAPTER XI.

Articles 6619, 6620, 6621, 6622, 6623, 6624 and 6625.

Art. 6619. (4543) (4259) *Property of company subject to execution.*—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. (Const., Art. 10, Sec. 4.)

Art. 6620. (4544) *Notice required in reducing wages.*—All persons in the employment of such railway company shall be entitled to receive thirty days' notice from said company before their wages can be reduced by such company; and, in all cases of reduction, the employe shall be entitled to receive from such com-

pany wages at his contract price for the full term of thirty days after such notice is given, to be recovered in any court of competent jurisdiction. (Acts 1887, p. 70.)

Art. 6621. (4545) *Service of notice and how given.*—The notice referred to in the preceding article is declared to mean thirty full days immediately prior to the day upon which such reduction is to take effect, and may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other places where said employes are at work; provided, such employe shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether he will or will not accept such reduction; and, if no such information is given such company by such employe, then such employe shall forfeit his right to such notice, and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. (Id., Sec. 2.)

Art. 6622. (4546) *Penalty.*—Any railway company violating or evading any of the provisions of the preceding article shall pay to each employe affected thereby one month's extra wages, to be recovered by such employe in any court of competent jurisdiction. (Id., Sec. 3.)

Art. 6623. (4547) *When wages to be paid discharged employe.*—Whenever any railroad company shall discharge any employe, or whenever the time of service of any employe of a railroad company shall expire, or whenever any railroad company shall be due and owing any employe, such railroad company, upon such discharge, or upon the termination of the term of such service, or upon the maturity of said indebtedness, shall, within fifteen days after demand therefor upon the nearest station agent of said railroad company, pay to such employe the full amount due and owing him; and in case said railroad company fails or refuses to pay such employe, then it shall be liable and pay to such employe twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. (Acts 1887, p. 72.)

Art. 6624. (4549) (4260) *Road, etc., liable to be sold for debts.*—In case of the sale of the property and franchises of a

railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgments heretofore or to be hereafter rendered by any court of competent jurisdiction the purchaser or purchasers at such sale and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, however, that said purchaser or purchasers and associates, if any, shall not be deemed and taken to be the owners of the charter of the railroad company and corporators under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers and associates, if any, shall agree to take and hold said property and franchises, charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by an instrument in writing signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State of the State of Texas; and, provided, further, that such charter, together with the powers, rights, privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the terms, provisions, restrictions and limitations imposed and to be imposed by law; and provided, further, that the amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas

at its discretion save that the total encumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6748 of the Revised Statutes of Texas. (Amended 4 S. S. 1910, p. 120; P. D. 4912.)

Art. 6625. (4550) *New corporation, in case of sale, may be formed, how.*—In case of any sale heretofore or hereafter made of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, shall be entitled to form a corporation under Chapter 1 of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend; provided, that, notwithstanding such incorporation, the property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for the loss of and damage to property sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for the current expenses of such operation including labor, supplies and repairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved; and provided further, that the amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises

shall not exceed the amount allowed by Article 6718 of the Revised Statutes of Texas. This and the preceding articles shall not be construed to in any wise repeal or impair the provisions of Chapter 16 of this title except in so far as the same may be changed thereby. (Acts 1889, p. 19; amended 4 S. S. 1910, p. 120.)

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TITLE 115. CHAPTER XV.

ARTICLES 6654, 6655, 6656, 6657, 6659, 6660, 6661, 6662, 6663, 6664, 6665, 6666, 6667, 6668, 6669, 6670, 6675, 6676, 6684, 6685, 6686, 6687, 6688, 6689, 6708a, 6708b AND 6708c.

Art. 6654. (1562) *Powers and duties.*—The power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

1. *To classify freights.*—The said Commission shall have power, and it shall be its duty to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

2. *To fix reasonable rates.*—The Commission shall have power, and it shall be its duty, to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions.

3. *Classifications to be uniform.*—The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter.

4. *May fix different rates.*—The said Commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

5. *Rates for connecting lines.*—The said Commission shall

have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

6. *Commission to fix when there is disagreement.*—If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, the Commission shall fix the pro rata part of such charges to be received by each of said connecting lines.

7. *Old rates to exist until changed by the Commission.*—Until the Commission shall make the classifications and schedules of rates as herein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classifications and rates shall be put into effect in the manner provided for general classifications and schedules of rates.

8. *May alter, abolish, etc.*—The Commission shall have power, and it shall be its duty, from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

9. *May adopt rules and regulations.*—The Commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints that may be made against the classifications or the rates, the rules, regulations and determinations of the Commission.

10. *Empty cars.*—The Commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays.

11. *May fix rates for all services.*—The Commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

12. *Railways to maintain depots, etc.*—It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads; provided, that this shall not be construed as repealing any existing laws on the subject. (Id., Sec. 3.)

Art. 6655. (4563) *Notice to be given when rates fixed.*—Before any rates shall be established under this chapter, the Commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

1. *May fix rules for all investigations.*—The Commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person desiring to be present at any such investigation by said Commission shall be denied admission.

2. *May administer oaths, etc.*—The chairman and each of the commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district or county court. (Id., Sec. 4.)

Art. 6656. (4564) *Rates to be held conclusive until, etc.*—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in

a direct action brought for that purpose in the manner prescribed by Articles 6657 and 6658 of this chapter. (Id., Sec. 5.)

Art. 6657. (4565) *When railway dissatisfied, may file petition, etc.*—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause; and said appeal shall be at once returnable to said appellate court at either of its terms; and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. (Id., Sec. 6.)

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Art. 6659. (4567) *Railroads to be furnished with schedule of rates fixed.*—The said Commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule in suitable form, showing the classification of freight made by them and the rates fixed by said Commission to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this State, if it has such office in this State, and, if not, then to any agent of said company in this State; which said schedule, rules and regulations shall take effect at the date which may be fixed by said Commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said Commission may at any time abolish, alter, or in any manner amend, the said schedules, or abolish or amend any such regulations; and in that

event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days notice to and consent of the Commission. (Id., Sec. 8.)

Art. 6660. *Emergency freight rates.*—In addition to the powers conferred on the Railroad Commission of Texas by Articles 6655 and 6659, said Commission shall have the power, when deemed by it necessary, to prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall be its duty to temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in his State, and to fix freight rates where none exist. (Acts 1899, p. 311, Sec. 1; Acts 1897, p. 51, Sec. 1.)

Art. 6661. *To what roads apply.*—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this State, or part of railroads, as may be directed by the Commission. (Acts 1897, p. 51, Sec. 2.)

Art. 6662. *Rates take effect when, and how long continued.*—Said rates, so made, shall take effect at such time and remain in force for such length of time as may be prescribed by the Commission. (Id., Sec. 3.)

Art. 6663. *Temporary freight and passenger tariffs, power to make.*—In addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff, and to establish freight and passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. (Acts 1907, p. 220, Sec. 1.)

Art. 6664. (4568) *Complainants may apply to Commission. Proceedings thereunder.*—Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing association, or any body politic, or municipal organization, complain-

ing of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or the provisions of this chapter, for which penalty is provided, may apply to said Commission in such manner and under such rules as the Commission may prescribe; whereupon if there shall appear to the Commission to be any reasonable grounds for investigating such complaint, it shall give at least five days notice to such railroad of such charge and complaint, and call upon said road to answer the same at a time and place to be specified by the Commission. The Commission shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. If the Commission finds that there has been a violation, it shall determine if the same was wilful; if it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State; but if said railroad shall not pay said damage and cost within the time specified by said Commission, or if the Commission finds such violation to be wilful, it shall institute proceedings to recover the penalty for such violation and the cost of such investigation. All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witness, may be used by either party, the State, complainant, or the railroad company, in any proceeding against such railroad involving the same subject matter; provided further, that the Commissioners may require the testimony so taken before them to be reduced to writing when they may deem it necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. The provisions of this article shall not abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this chapter, or any other law of this State. (Acts 1891, p. 55, Sec. 9.)

Art. 6665. (4569) *May inspect books, etc.*—The Commissioners, or either of them, or such persons as they employ there-

for, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employe of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the Commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any persons other than one of said Commissioners who shall make any such demands shall produce his authority, under the hand and seal of said Commission, to make such inspection. (Id., Sec. 10.)

Art. 6666. (4570) *To ascertain cost of railway, etc.*—The Commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures and indebtedness, and the amount respectively thereof, when issued, and rate of interest, when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor. The Commission shall also ascertain the amounts paid for salaries to the officers of the railroad and the wages paid its employes. For the purpose in this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use; and said information shall be printed from time to time in the annual report of the Commission. (Id., Sec. 11.)

Art. 6667. (4571) *Blanks for information to be prepared.*—

The said Commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the Commission any such blanks shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said Commission at its office in the City of Austin within thirty days from the receipt thereof.

1. *Penalty for failure to fill out blanks. Commission to adopt system of bookkeeping.*—If any officer or employe of a railroad company shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or give a false answer to any such questions, where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, such person shall be guilty of a misdemeanor and shall, on conviction thereof, be fined for each day he shall fail to perform such duty after the expiration of the time aforesaid a penalty of five hundred dollars, and the Commission shall cause a prosecution therefor in the proper court; and a penalty of a like amount will be recovered from the company when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of bookkeeping to be observed by all the railroads subject hereto, under the penalties prescribed in this article.

2. *Annual reports.*—The said Commission shall make and submit to the Governor annual reports containing a full and complete account of the transaction of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

3. *Duty as to through freights.*—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the Interstate Commerce Law, or the rules and regulations of the Interstate Commerce Commission, the officials

of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief. (Id., Sec. 12.)

Art. 6668. (1572) *Power to issue subpoenas. Pay of witnesses. Proceedings to compel attendance of witnesses.*—The said Commission, in making any examination or investigation provided in this chapter, shall have power to issue subpoenas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the Commission by order of the Commission, at a place outside of the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission, which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers, sworn to by such witness, and approved by the chairman of the Commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this State or out of it, or who is in anywise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employe of such road, or an officer thereof, when summoned at the instance of such railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpoenas, said Commission may issue an attachment for said witness, directed to any sheriff or any constable of the State of Texas, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding; provided, the Com-

sioner shall in all cases have the right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this article or under any other provisions of this chapter shall receive such compensation as may be allowed by the Commission, not to exceed fees as now prescribed by law for similar services. (Id., Sec. 13.)

Art. 6669. (1551) *Penalty for extorting.* If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars. (Id., Sec. 14.)

Art. 6670. (1552) *"Unjust discrimination" defined.* If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

1. *Same.* It shall also be an unjust discrimination for any such railroad to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. *Same.* Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the Commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the Commission, fail or refuse to

transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust discrimination: provided, perishable freights of all kinds and live stock shall have precedence of shipment.

3. *Same.*—It shall also be an unjust discrimination for any railroad subject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter than for a longer distance over the same line: provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall from time to time prescribe the extent to which such designated railroad may be relieved from the operations of this provision; provided, that no manifest injustice shall be imposed upon any citizen at intermediate points; provided further, that nothing herein shall be so construed as to prevent the Commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. *Penalty for unjust discrimination.*—Any railroad company violating any provision of this article shall be deemed guilty of unjust discrimination, and shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. *Law does not apply, when.*—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation, under such circumstances and to such persons as may be allowed or permitted by the law of this State. (Id., Sec. 15.)

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Art. 6675. (1579) *All violations of duty to be reported to Attorney General.*—It is hereby made the duty of such Railroad Commission to see that the provisions of this chapter and all laws of this State concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the State therefor recovered and collected. And said Commission shall report all such violations, with the facts in their possession, to the Attorney General, or other officer charged with the en-

forcement of the laws, and request him to institute the proper proceedings; and all suits between the State and any railroad shall have precedence in all courts over all other suits pending therein.

1. *Duty to investigate all charges and see that the law is enforced.*—It shall be the duty of the Commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this State in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other; which contract, however, shall be submitted to the Railroad Commission for examination and approval, and when so approved shall be binding; but, if the said contract be not approved by the Commission, the same shall be void; provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. (Id., Sec. 21.)

Art. 6676. (4580) *"Road," "railroad," "railroad companies," etc., defined. Law applies only to railroads in this State. One train a day to be run.*—The terms "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns.

2. It shall be the duty of the Commissioners to see that upon every railroad and branch of same carrying passengers for hire in this State, shall be run at least one train a day, Sundays excepted, upon which passengers shall be hauled, and the Commission shall have no power to relax this provision, and shall further regulate passenger train service by requiring all passenger trains carrying

passengers for hire to stop for a time sufficient to receive and let off passengers at such stations as may be designated by the Commissioners; provided, that four trains each way, carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop as aforesaid at all county seat stations. (Id., Sec. 22; Acts 1903, p. 183.)

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Art. 6684. *Duty to furnish cars, etc.*—It is hereby declared to be the duty of every railroad company incorporated under the laws of the State of Texas and doing business in this State, under limitations and regulations prescribed by the Railroad Commission of Texas, to equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. (Acts 1907, p. 297, Sec. 1.)

Art. 6685. *Commission to require and authorize mortgage, etc.*—The Railroad Commission shall have authority, and it is hereby made its duty, to see that each and every railroad corporation chartered under the laws of this State, holding itself out as a public highway and common carrier, shall provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic expeditiously and without delay. The Railroad Commission of Texas shall be vested with full power to require of such common carriers the purchase of such rolling stock and motive power and will properly equip such common carrier and facilitate the movement of all traffic, passenger and freight, and that will supply the transportation accommodations which such common carrier offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Railroad Commission is also authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Railroad Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment and discretion of the Commission any railroad company in this State, which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, it shall be the duty of said Railroad Commission of Texas, after not less than five days' notice and hearing, to issue

an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Railroad Commission of Texas is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. (Id., Sec. 2.)

Art. 6686. *Penalty for failure to comply.*—Any railroad company or common carrier failing to comply with the provisions of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of the provisions hereof, shall be deemed guilty of an abuse of their rights and privileges, and, upon conviction, shall be subject to a fine of one hundred dollars for a violation or failure to comply with any order that may be issued by the Railroad Commission as is provided said Commission may do by Article 6685, and each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. (Id., Sec. 3.)

Art. 6687. *Shall furnish freight facilities, interchange cars, etc.*—It is hereby declared to be the duty of every railroad company operating a line of railroad within this State, to provide sufficient tracks, switches, sidings, yards, depots and other facilities for receiving and delivering freight, motive power, cars and all other needful facilities and appliances, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and to furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered, or to be offered or tendered, to it for shipment within a reasonable time after demand therefor made by any shipper of such freight; and to supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight, at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars in which to load the same; and as to all services to be performed within the limits of this State, as to such freight and cars to transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a

point beyond the line of such railroad, then to transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, or to be made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and it shall likewise be the duty of each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, to receive and transport within a reasonable time such loaded car or cars offered or tendered to it, if in suitable condition for movement, and deliver the same at the destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad; provided, that where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where, by reason of any accidental or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such case where suitable cars may be supplied. Provided, that as to freight carried wholly within this State, the Railroad Commission of Texas shall have the power, and authority is hereby vested in it, to make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Provided, also, that whenever by reason of any accidental or unavoidable cause which can not be reasonably provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on ac-

count of such failure, be liable to the penalties of attorneys' fees, or as otherwise herein prescribed. But nothing in this article shall in any wise affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any of the provisions of the statutes of this State, or other duties imposed by law. (Acts 1907, p. 343, Sec. 1.)

Art. 6688. *To interchange cars at junction points.*—For the purpose of facilitating the movement, preservation and exchange of freight, it shall be the duty of every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, to exchange at such connecting or junction points, the loaded and empty cars used in or for the transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and it shall be the duty of any such railroad companies forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line, delivering to it any such loaded car or cars of freight at junction points within this State, to furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and, upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, it shall be the duty of every such railroad company so receiving the cars of another to return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand therefor; and as to cars exchanged in transporting freight wholly in this State within the time and according to the rules and regulations prescribed by the Railroad Commission of Texas. (Id., Sec. 2.)

Art. 6689. *Commission to make rules and regulations.*—The Railroad Commission of Texas is hereby authorized and empowered, as to all freight carried wholly within this State and the cars used therefor, to make and establish all needful rules and regula-

tions, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and to prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage, the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. It shall be the duty of every such railway company to conform to all of the rules and regulations and orders of the Commission made in accordance with the two preceding and the three succeeding articles; and the failure of any such railroad company to observe the rules and regula-

lows of the Commission, or to comply with the provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the Railroad Commission of Texas, and shall subject such railroad company to the penalties hereinafter provided. (Id., Sec. 5.)

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Art. 6708a. *Maintenance of roadbed and tracks; powers of Commission.*—The Railroad Commission of Texas shall have authority and it is hereby made its duty to see that each and every railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employes and with reasonable dispatch.

The Railroad Commission of Texas shall be vested with full power to require of any such railroad company to purchase or secure for installation in its roadbed or track all such ties, rails, ballast and other materials and equipment as may, in the judgment of the Railroad Commission of Texas, be necessary for the proper maintenance of such track and roadbed so as to enable such railroad corporation to adequately perform its duties to the public and to transport freight and passengers with safety thereunto and without delay.

The Railroad Commission of Texas is hereby empowered to require any such railroad company to acquire and install in the whole of such track or roadbed or any portion thereof that may be designated by the Railroad Commission of Texas, such ties, rails, ballast and other materials as may, in the judgment of the Railroad Commission, be adequate and sufficient to place such track or roadbed in safe condition. (Acts 1915, Chap. 129, Sec. 1.)

Art. 6708b. *Same; penalty for failure to comply with orders of Commission.*—When the Railroad Commission of Texas shall have made any such order as authorized by Section 1 of this act (Art. 6708a), it shall be the duty of any such railroad company or receiver subject thereto, to promptly comply with the terms thereof, and for failure or refusal to do so, such company or receiver shall become liable to the State of Texas, 'as in other cases of failure to comply with orders of the Railroad Commission as provided by law.' In addition to such penalties, any court of competent jurisdiction shall have the power to, and it shall be

its duty to, issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. (Id., Sec. 2.)

Art. 6708c. *Same; issuance of bonds.*—In any case where the Railroad Commission of Texas shall make an order in accordance with the preceding sections of this bill for the improvement of the line of railway of any railroad corporation, then and in such event the Railroad Commission of Texas, at the time of making such order, may, and it is hereby authorized, in its discretion, to make an order permitting said railroad corporation to issue bonds sufficient to raise the money necessary to make such improvements; to authorize such railroad corporation to secure the same by proper mortgage upon its property, and to designate such bonds and mortgage as "Improvement Bonds and Mortgages"; provided, the entire amount of bonds of said railroad company, including the new bonds, shall not exceed the assets of said company, and the said Railroad Commission is hereby vested with power and authority to make such orders.

It is also the duty of said Railroad Commission of Texas to see that the funds arising from the sale of such bonds shall be applied to the making of such improvement as it ordered said railroad corporation to make, and it is hereby vested with power and authority to regulate the same in the proper manner, and any sale of any such "Improvement Bonds and Mortgages" at less than par value thereof must, in order to be valid, be approved by the Railroad Commission. Provided, that the provisions of this act shall not be considered as a repeal or modification in any manner of the present stock and bond law of the State governing the issuance of stocks and bonds by railroads. (Id., Sec. 2 (3).)

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CHAPTER 16—ISSUANCE OF STOCKS AND BONDS REGULATED.

ARTICLES 6711 * * * 6730.

Art. 6711. (1584) *Regulation of issue of stocks, bonds, etc., by railroads vested in State.*—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stock and shares thereof, and the execution of all liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regu-

lation, restriction, and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws. (Acts 1893, p. 57.)

Art. 6718. (4584b) *Issue of incumbrance above value of the road prohibited; except, etc.* Hereafter no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Railroad Commission that public interests or the preservation of the property demand it, the said Commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than 50 per cent over the value of said property. (Id., Sec. 2.)

Art. 6719. (4584c) *Railroad Commission to ascertain and report railroad values; proceeding incident thereto.*—It shall be the duty of the Railroad Commission to ascertain, and in writing report to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report value, the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it have any objections thereto it must file them, in writing, within forty days after said service, or the same will be so deposited with the Secretary of State as correct. Should the company, or its duly authorized representative, file with said Commission any objections to said report of value, the Commission shall duly investigate and pass on the same. On investigation, if the Commission conclude that its report of value is too low or too high, then it shall make the necessary correction before filing it. Should no objections be filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in Article 6718. To promote public interests and protect private rights, the Commission, after due notice under the rule herein

prescribed, may correct its report of value of any railroad at any time it may deem proper. (Id., Sec. 3.)

Art. 6720. (1584d) *Effect of judicial or other sale of railroad.*—Every judicial or other sale of any railroad in this State hereafter made, which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold out, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company organized hereafter to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. (Id., Sec. 4.)

Art. 6721. (1584e) *Purchasers complying with law may issue bonds, etc.*—The purchasers of said property who procure it clear of incumbrance, or any company organized by their consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that they deem advisable, subject to the rules, restrictions and limitations prescribed in the three preceding articles. (Id., Sec. 5.)

Art. 6722. (1584f) *Authority to issue bonds before completion of roads must be obtained, etc.*—Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchise and property, in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Railroad Commission thereto. In said application it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchises and property proposed as security for said contemplated debts. If, on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize

the execution of said indebtedness and lien to the extent necessary for the demands of the work, at no time to be more than 50 per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Articles 6723, and have them registered, as required in Article 6724. (Id., Sec. 6.)

Art. 6723. (4584g) *Prescribing how certificates of stock shall issue.*—Each railroad company now existing, or that shall hereafter be organized, or that shall be reorganized under the laws of the State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in the State of Texas, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct and shall sign the same in person. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Railroad Commission, and by it filed and preserved in the office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall hereafter increase its stock, unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state

that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Railroad Commission. (Id., Sec. 7.)

Art. 6724. (1584b) *Prerequisites to the issue by railroad companies of bonds, etc.*—Whenever any railroad company in this State shall hereafter desire to make, issue and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date, and shall bear interest not exceeding 6 per cent per annum. The said bonds, when thus prepared, shall be presented to the Railroad Commission of this State, with a statement in writing, signed and sworn to by the president of said company, showing the amount of the stock of said company, and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Railroad Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates and amounts thereof. And said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval; provided, that this provision shall not apply to receivers' certificates where the amount does not exceed one hundred thousand dollars. (Id., Sec. 8.)

Art. 6725. (1584i) *Duty of Secretary of State.*—When any such bonds shall be presented to the Secretary of State with the direction aforesaid to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same

is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." No bond, or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein. (Id., Sec. 9.)

Art. 6726. (1584j) *Forfeiture of charter.*—If any railroad company owning or operating a railroad in this State shall hereafter issue or consent to or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of the charter of said company; and it shall be the duty of the Attorney General to institute proceedings in a court of competent jurisdiction to forfeit the same. (Id., Sec. 10.)

Art. 6727. (1584k) *Certificates, bonds, etc., void.*—Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without a compliance with this chapter, shall be void. (Id., Sec. 11.)

Art. 6728. (1584l) *Penalties hereunder; venue.*—Each and every railroad director, president, secretary, or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Railroad Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be punished as provided in the Penal Code, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis County, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located. (Id., Sec. 12.)

Art. 6730. *Amendment of charter; construction of branch lines; issuance of bonds.*—Any corporation incorporated for the

purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, and which on April 15, 1901, owned a line of railway already constructed, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in accordance with Chapter 1 of this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines, that it may desire to construct, and may issue stocks and bonds or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter; and the Railroad Commission of the State of Texas is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and, in determining the right to issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in anywise repeal or impair any other of the provisions of this chapter, or of the existing laws of this State, except in so far as the same may be changed by the provisions of this article. (Acts 1901, p. 253, Secs. 1 and 2.)

EXHIBIT NO. 4.

TITLE 130, CHAPTER 1, REVISED CIVIL STATUTES, STATE OF TEXAS.

ARTICLES 7796, 7797, 7798, 7799, 7800, 7801, 7802, 7803, 7804, 7805, 7806, 7807, 7808, 7809.

Art. 7796. *"Trusts" defined.*—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation of insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall in any manner affect or maintain the price

of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for the market or transportation by them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof. (Acts 1903, p. 119, Sec. 1.)

Art. 7797. *"Monopoly" defined.*—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. (Id., Sec. 2.)

Article 7798. *Conspiracies against trade, what constitutes.*—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any

article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or association of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. (Id., Sec. 3.)

Art. 7799. *Acts and things mentioned declared illegal.*—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. (Id., Sec. 4.)

Art. 7800. *Charters forfeited.*—Any corporation holding a charter under the laws of the State of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. (Id., Sec. 5.)

Art. 7801. *Attorney General to institute quo warranto proceedings.*—For violation of any of the provisions of this chapter, or any anti-trust laws of this State, by any corporation, it shall be the duty of the Attorney General, upon his motion and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis County, or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence; and for such purposes, venue is hereby given to each district court in the State of Texas. (Id., Sec. 6; amended Acts 1909, p. 281.)

Art. 7802. *Successors to defaulting corporations prohibited from doing business.*—When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions of this chapter, and its charter and franchise has been forfeited, as provided in Article 7800, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. (Acts 1903, p. 119, Sec. 7.)

Art. 7803. *Foreign corporations prohibited from doing business.*—Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and is prohibited from

doing any business within this State; and it shall be the duty of the Attorney General to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas. (Id., Sec. 8.)

Art. 7804. *Quo warranto proceedings.*—The provisions of Title 114, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. (Id., Sec. 9.)

Art. 7805. *Successor to convicted foreign corporations may continue business; permit; modification of judgment; retention of jurisdiction for enforcement of act.*—When any foreign corporation has been convicted of a violation of any of the provisions of this chapter and its right to do business in this State has been forfeited, as provided in Article 7803, then, before any other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas, such other corporation shall be required to go into the court where the original judgment was entered and show that it is independently owned and is independently operated, and has no connection with any person, firm or corporation engaged in violating the laws against trusts or monopolies, and is not itself so engaged. Provided, further, that at the time of the organization of such other corporation, at the time of making application for the permit to do business in Texas at the time of receiving such permit, and at all other times thereafter, the ownership of a majority of its stock shall actually and in good faith, be held by other and different persons than those who owned a majority of the stock in the convicted corporation at the time of such conviction and at the time of the doing of the acts and things for which it was convicted, or at each or either of such times; whereupon, and after a hearing had after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such other corporation to incorporate or secure a permit, and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State, who shall issue such permit.

Provided, that notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General of the State, whose duty it shall be to represent the State in such proceeding;

and provided further, that the court may require the production of all books and records and may appoint a commission to take testimony, either within or without the State; and provided further, that the expense of the entire proceeding shall be borne in all events by such corporation; and it is further provided that the court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall upon showing that the said corporation which has taken over such properties or business, or its assigns or successors, is violating the laws against trusts or monopolies, or has connection with any person, firm or corporation engaged in violation of the laws against trusts or monopolies, the court shall set aside any order or judgment entered, and in which event all proceedings based thereon, including all transfers of any and all properties, shall be nullified and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings as herein provided; and provided further, that if the court shall, after the hearing provided for, refuse to modify or reform such judgment, no permit shall be issued by the Secretary of State to the corporation to whom the properties or business of the convicted corporation have been transferred or to the corporation which has assumed the payment of the obligations of the convicted corporation. (Acts 1903, p. 119, Sec. 1.)

Art. 7806. *Penalties; venue; fees of Attorney General.*—Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas in the district court of any county in the State of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county except upon change of venue allowed by the court; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same; and the fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be 10 per cent

of the amount collected up to and including the sum of fifty thousand dollars, and 5 per cent on all sums in excess of the first fifty thousand dollars, to be retained by him when collected; and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this chapter as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court, nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court whether such judgment or judgments are pending upon appeal or otherwise; and provided further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause; and in case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; provided further, that in case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. (Acts 1903, p. 119, Sec. 11; amended Acts 1909, p. 128.)

Art. 7807. *All agreements in violation of, void.*—Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforcible either in law or equity. (Acts 1903, p. 119, Sec. 12.)

Art. 7808. *Actions under this chapter to have precedence.*—All actions authorized and brought under this chapter shall have precedence, on motion of the prosecuting attorney or the Attorney General, of all other business, civil and criminal, except criminal cases where the defendants are in jail. (Id., Sec. 16.)

Art. 7809. *Recovery against one does not bar recovery against others.*—Recovery against any person or persons for any violation of the provisions of this chapter shall not bar recovery against any other person or persons for the same offense. (Acts 1907, p. 456, Sec. 20.)

EXHIBIT NO. 5.

REVISED STATUTES OF 1879, STATE OF TEXAS, TITLE 84, CHAPTERS 12 AND 13 THEREOF, ARTICLES 4267 TO 4280.

LANDS OF RAILROAD CORPORATIONS.

Article 4267. Any railroad corporation heretofore chartered, or which may be hereafter organized under the general laws of this State, shall, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there is hereby granted to every such railroad from the State, sixteen sections of land for every mile of its road so completed and put in good running order.

Art. 4268. No company whose road is of less than three feet gauge shall be entitled to receive any grant of lands under the preceding article.

Art. 4269. Companies constructing railroads on the prismoidal plan shall be entitled to receive from the State eight sections of land to the mile, on the same terms as other roads.

Art. 4270. This chapter shall not be construed to renew or continue any right to any company which has failed or may fail to comply with the terms of its charter, with reference to the completion of portions of its road in stated times; nor so as to grant the aid herein provided for to any railroad that has already received or is otherwise entitled to receive aid from the State to the amount of sixteen sections of land to the mile.

Art. 4271. Any railroad company having completed and put in good running order a section of ten miles or more of its road may give notice of the same to the Governor, who it shall be to appoint some skillful engineer, if there be no State engineer, to examine said completed road, and report in writing and under oath to the Governor the result of such examination.

Art. 4272. It must appear from said report—

1. That said road is substantially built.

2. That it is fully equipped for the transportation of both passengers and freight.

3. That the same is operated by steam or other mechanical power.

4. That it is constructed of iron rails not less than thirty pounds to the lineal yard.

5. If it be a prismoidal road, that the rails weigh not less than twenty-two pounds to the lineal yard.

6. The length of such completed road; and,

7. That the same has been constructed in accordance with its charter, or with the general laws under which it may be constructed, or with the general laws in force regulating railroads.

Art. 4273. The report mentioned in the preceding article shall be made to the Governor, and thereupon if the Governor be fully satisfied that the same is correct and true he may certify the fact to the Commissioner of the General Land Office, stating in such certificate the number of sections of land to which said railroad company is entitled, and said Commissioner shall file said certificate in his office and proceed to issue certificates to said company for the number of sections of land to which they are entitled.

Art. 4274. When said certificates have been issued the company to whom issued, or its assignees, may apply to the surveyor of any land district in the State to survey such lands out of any unappropriated public land in his district.

Art. 4275. Said surveys shall be made in alternate sections or half sections, as nearly square as practicable, one of such surveys for the company and one for the State for the benefit of the public school fund.

Art. 4276. A map of all such surveys shall be returned with the field notes thereof to the general office, when the Commissioner of the General Land Office shall number contiguous surveys with even and odd numbers, and shall issue to the company patents for the odd surveys.

Art. 4277. All lands acquired by railroad companies under the provisions of this chapter or any general laws of this State shall be alienated by said companies, one-half in six years, and one-half in twelve years from the issuance of patents to the same, and all lands so acquired by railroad companies and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands.

Forfeiture of Charter.

Article 4278. If any railway corporation organized under this title shall not within two years after its articles of association have

been filed and recorded as provided by this title begin the construction of its road, and construct, equip, and put in good running order at least ten miles of its proposed road, and if any such railroad corporation, after the first two years from the date of its organization, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall in either such cases forfeit its corporate existence, and its powers shall cease as far as it relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation.

Art. 4279. The preceding article shall apply as well to branch lines as to main lines of railroad.

Art. 4280. Any railroad corporation which shall neglect to make the annual report to the Comptroller required by this title, and which has been notified by the Comptroller of such failure, and shall still neglect to make such report within three months after such notice, shall forfeit its charter.

EXHIBIT NO. 6.

CHAPTER 19 OF THE REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE OF THE STATE OF TEXAS FROM AUGUST 31, 1898, TO SEPTEMBER 1, 1900, TO HIS EXCELLENCY, JOSEPH D. SAYERS, GOVERNOR OF TEXAS.

CHAPTER XIX.

QUANTITY OF LAND SURVEYED AND RETURNED TO THE GENERAL LAND OFFICE FOR PATENT, UNDER CERTIFICATES ISSUED TO RAILROAD COMPANIES.

On the 14th of December, 1899, at the request of your Excellency, I caused to be carefully compiled the total number of acres as called for in the certificates granted to the railroad companies named below, which were surveyed, and the field notes, together with the certificates, were returned to the General Land Office for patent within the time prescribed by law, towit:

Buffalo Bayou, Brazos & Colorado	887,021
Houston & Texas Central	4,764,160
San Antonio & Mexican Gulf	264,898
Houston Tap & Brazoria	500,480
Washington County	236,160
Texas & New Orleans	1,226,880
Eastern Texas	291,840
Memphis, El Paso & Pacific	258,399
Southern Pacific	562,560
Texas & Pacific	5,167,360
Indianola	171,520
Galveston, Houston & Henderson	610,560
Columbus Tap	49,280
Houston & Great Northern	2,307,200
International & Great Northern	3,331,200
Waco & Northwestern	481,280
Galveston, Harrisburg & San Antonio	1,432,960
Gulf, Western Texas & Pacific	299,520
Dallas & Wichita	411,520
Tyler Tap	458,240
Texas Western Narrow Gauge	428,160

Gulf, Colorado & Santa Fe	3,259,520
East Line & Red River	1,164,160
Galveston, Brazos & Colorado Narrow Gauge	157,440
Corpus Christi, San Diego & Rio Grande Narrow Gauge	855,680
Houston & Overton Branch	143,360
Houston, East & West Texas	787,840
Longview & Sabine Valley	108,800
Denison & Southeastern	214,400
Georgetown	98,560
Central & Montgomery	263,040
Denison & Pacific	426,240
Waxahachie Tap	113,920
Texas Central	1,471,360
Missouri, Kansas & Texas Extension	272,000
Texas & St. Louis	942,080
Texas Trunk	107,520
Texas Mexican	556,800
Chicago, Texas & Mexican Central	225,280
Austin & Northwestern	382,720
Rusk Transportation	76,800
Total number of acres surveyed and returned to Land Office for patent	35,768,718

Of the whole amount of land for which certificates were issued, 35,768,718 acres were surveyed and the field notes were duly returned to the Land Office. The Austin & Northwestern Railway Company located 127 of its certificates, aggregating 273,280 acres, in Greer county, which it, or its assigns, has since lost. Of the number of acres patented to the Galveston, Harrisburg & San Antonio, the Houston & Texas Central, and the Texas & Pacific railway companies, the State has recovered by suit 1,316,383 acres.

Altogether, on account of conflicts and other illegal surveys, and after deducting that recovered by the State, the quantity of land the railroad companies, or their assigns, actually received was only 24,454,713 acres.

The foregoing data is deemed of sufficient importance to be incorporated in this report for general information.

Respectfully submitted,

CHARLES ROGAN.

State of Texas,
County of Travis.

This is to certify that the foregoing words and figures are a true and correct copy of Chapter 19 of the Report of the Commissioner of the General Land Office of the State of Texas, Charles Rogan, from August 31, 1898, to September 1, 1900, to the Governor of the State of Texas, as the same appears therein and that said report was made in compliance with Articles 2504 and 2505 of the Revised Statutes of Texas of 1895.

Witness my hand this 17th day of May, A. D. 1921.

(Seal) J. H. WALKER,
Chief Clerk and Acting Commissioner of the General Land Office.

EXHIBIT NO. 7.

MILEAGE AND BONDED INDEBTEDNESS OF TEXAS RAILROADS.

No	Name of Railroad	Mileage owned in Texas	Amount outstanding	Amount per mile of road owned
1	Abilene & Northern	58.70	$ 516,000	$ 13,333
2	Abilene & Southern	72.17	1,012,086	14,024
3	Angelina & Neches River	30.63		
4	Aransas Harbor Terminal	10.37	294,000	28,351
5	Artesian Belt	42.23		
6	Asherton & Gulf	32.10		
7	Bartlett Western	23.20		
8	Beaumont & Great Northern	48.30	883,000	18,222
9	Beaumont, Sour Lake & Western	84.20	2,057,825	24,444
10	Beaumont Wharf & Terminal	1.94	64,000	13,035
11	Brownwood, North & South	17.65	91,000	5,156
12	Bryan & Central Texas Interurban	23.34	300,000	12,853
13	Bryan & College Interurban	6.50	100,000	15,385
14	Cane Belt	107.96	113,643	1,053
15	Chicago, Rock Island & Gulf	468.32	9,656,000	20,618
16	Concho, San Saba & Llano Valley	59.65		
17	Dallas, Cleburne & Southwestern	9.82	150,000	15,275
18	Dallas Terminal & Union Depot	12.18	731,000	60,016
19	Dayton-Goose Creek	22.90		
20	Denison & Pacific Suburban	7.85	100,000	12,739
21	Denison, Bonham & New Orleans	24.15	350,000	14,493
22	East Texas & Gulf	9.60		
23	Eastern Texas	30.30		
24	El Paso & Northeastern	19.22		
25	El Paso & Southwestern of Texas	1.69		
26	El Paso Southern	2.40		
27	Fort Worth & Denver City	454.14	8,176,000	18,003
28	Fort Worth & Denver Terminal	13.79	728,000	52,792
29	Fort Worth & Rio Grande	223.14	4,467,000	19,992
30	Fort Worth Belt	18.00		
31	Fredericksburg & Northern	25.40	180,827	7,128
32	Galveston, Harrisburg & San Antonio	1,377.24	30,707,000	22,297
33	Galveston, Houston & Henderson	47.53	2,422,000	14,854
34	Galveston Terminal	3.52	1,106,000	313,314
35	Galveston Wharf	16.81	5,080,000	64,089
36	Groveton, Lufkin & Northern	21.15	457,000	20,662
37	Gulf & Interstate of Texas	70.31	829,000	11,791
38	Gulf & Northern	14.83		
39	Gulf, Beaumont & Great Northern	77.78	1,440,036	18,514
40	Gulf, Beaumont & Kansas City	62.59	1,936,084	30,933
41	Gulf, Colorado & Santa Fe	1,143.77	41,896,764	36,546
42	Gulf, Texas & Western	99.10	2,000,000	20,182
43	Houston & Brazos Valley	28.30	420,000	14,789
44	Houston & Texas Central	856.10	12,117,000	14,149
45	Houston Belt & Terminal	18.50	1,563,000	245,454
46	Houston, East & West Texas	180.94	3,000,000	15,742
47	International & Great Northern	1,107.18	14,196,500	12,820
48	Jasper & Eastern	17.45		
49	Jefferson & Northwestern	41.19		
50	Kansas City, Mexico & Orient of Texas	465.71	4,840,000	10,328
51	Lufkin, Hemphill & Gulf	12.20		
52	Marshall & East Texas	91.32	1,180,000	12,922
53	Midland & Northwestern	65.11	215,000	3,301
54	Missouri, Kansas & Texas of Texas	1,118.61	34,458,154	30,804
55	Missouri, Oklahoma & Gulf of Texas	2.10	350,000	38,462
56	Moscow, Camden & San Augustine	7.00		
57	Nacogdoches & Southwestern	11.00		
58	Orange & Northwestern	64.55	1,066,946	17,334
59	Panhandle & Santa Fe	124.92	3,759,941	30,099
60	Paris & Great Northern	16.94	339,000	20,012
61	Paris & Mount Pleasant	54.43	600,000	11,666
62	Pecos & Northern Texas	570.67	11,984,000	21,000
63	Pecos River	54.24	696,000	12,832
64	Pecos Valley & Southern	10.10	100,000	9,901
65	Port Bolivar Iron Ore	29.66	876,489	29,551
66	Quanah, Acme & Pacific	78.92	1,758,000	22,276
67	Rio Grande	22.50	65,000	2,889
68	Rio Grande & Eagle Pass	28.44	600,000	21,097

No.	Name of Railroad	Mileage owned in Texas.	Amount outstanding.	Amount per mile of road owned.
74	Rio Grande, El Paso & Santa Fe	20.22	$ 500,000	$ 24,728
77	Roscoe, Snyder & Pacific	49.77	215,000	4,320
78	St. Louis, Brownsville & Mexico	502.24	12,913,342	25,711
79	St. Louis, San Francisco & Texas	85.32	1,188,080	13,924
80	St. Louis Southwestern of Texas	694.95	15,729,500	22,634
81	San Antonio & Aransas Pass	723.80	27,471,365	37,954
82	San Antonio Belt & Terminal	7.31	1,750,000	239,398
83	San Antonio, Uvalde & Gulf	311.52	4,413,000	14,031
84	San Benito & Rio Grande Valley	64.99	953,735	14,675
86	Shreveport, Houston & Gulf	9.00		
88	Southplains & Santa Fe	102.34	120,000	1,173
89	Southwestern	29.09	354,000	12,169
90	Stamford & Northwestern	82.50	1,872,880	22,702
91	Stephenville, North & South Texas	105.73	2,697,000	21,057
92	Sugar Land	39.28	384,000	9,776
93	Texarkana & Fort Worth	87.50	2,427,847	27,810
94	Texas & Gulf	94.56	2,427,847	27,810
95	Texas & New Orleans	163.74	9,811,631	21,164
96	Texas & Pacific	1,038.53	30,619,094	29,483
97	Texas, Arkansas & Louisiana	7.70		
98	Texas Central	308.72	2,000,000	6,478
99	Texas City Terminal	6.58		
101	Texas Mexican	161.85	2,310,000	14,458
102	Texas Midland	111.18	2,000,000	17,989
103	Texas Short Line	12.85	175,000	13,619
104	Texas Southeastern	27.85		
105	Texas State	32.56	100,000	3,071
106	Timpson & Henderson	34.00		
107	Trinity & Brazos Valley	302.82	16,716,741	55,303
108	Trinity Valley & Northern	18.00		
109	Trinity Valley Southern	6.00		
110	Union Terminal	4.83	5,000,000	1,035,197
111	Weatherford, Mineral Wells & Northwestern	43.64	660,000	15,124
112	Wichita Falls	17.98	211,000	11,902
113	Wichita Falls & Northwestern of Texas	17.10	250,000	14,620
114	Wichita Falls & Oklahoma	22.80	257,000	11,272
115	Wichita Falls & Southern	52.36	720,000	13,923
116	Wichita Falls & Wellington of Texas	15.00	225,000	15,000
117	Wichita Valley Railroad	60.70	711,000	12,247
118	Wichita Valley Railway	52.20	769,000	14,732
	Total	15,866.54	$ 358,382,110	

EXHIBIT NO. 8.

TRANSPORTATION ACT OF 1920, APPROVED FEBRUARY 28, 1920, 41 STAT. L., 456, SECTION 402, SUBDIVISIONS 18, 19, 20, 21 AND 22.

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the Governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the cer-

tificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation or abandonment covered thereby. Any construction, operation or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5000 or by imprisonment for not more than three years, or both.

(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this act, and to extend its line or lines: *provided*, that no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or sidetracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

EXHIBIT NO. 9.

TRANSPORTATION ACT OF 1920, APPROVED FEBRUARY 28, 1920, 41 STAT. L., 400, SECTION 407, SUBDIVISIONS 1, 2, 3, 4, 5, 6, 7 AND 8.

(1) That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of Section 1 of this act, it shall be unlawful for any common carrier subject to this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: *provided*, that whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises.

(2) Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

(3) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or (2), as it may deem necessary or appropriate.

(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

(6) It shall be lawful for two or more carriers by railroad, subject to this act, to consolidate their properties or any part thereof into one corporation for the ownership, management and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission.

(b) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Com-

mission. The value of the properties sought to be consolidated shall be ascertained by the Commission under Section 19a of this act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

(c). Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties sought to be consolidated is situated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(7) The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory act; and pending the decision of the Commission such consolidation shall not be dissolved.

(8) The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the "antitrust laws," as designated in Section 1 of the act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section.

EXHIBIT NO. 10.

TRANSPORTATION ACT OF 1920, APPROVED FEBRUARY 28, 1920, STAT. L., 484, SECTION 439, SUBDIVISIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

SEC. 20a. (1) That as used in this section the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this act.

(2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as

it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

(4) Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

(5) Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

(6) Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the Governor of each State in which the applicant carrier operates. The railroad commissions, public service or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, involved in such proceeding. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

(7) The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

(8) Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

(9) The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities. Provided, that in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

(10) The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof,

the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(12) After December 31, 1921, it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than $1000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

EXHIBIT NO. 11.

TRANSPORTATION ACT, 1920, APPROVED FEBRUARY 28, 1920, 41 STAT. L., 488, SECTION 422, SUB-DIVISIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18.

Sec. 15a. (1) When used in this section the term "rates" means rates, fares, and charges, and all classification, regulations, and practices, relating thereto; the term "carrier" means a carrier by railroad or partly by water, within the continental United States, subject to this act, excluding (a) sleeping car companies and express companies, (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight, and (d) any belt line railroad, terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or political subdivision thereof; and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; provided, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uni-

form for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation; provided, that during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under Section 19a of this act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever, pursuant to Section 19a of this act, the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall

hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of Section 209½ of this amendatory act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

(7) For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose.

(9) The Commission shall prescribe rules and regulations for the determination and recovery of the excess income payable to it under this section, and may require such security and prescribe

such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective.

(10) The general railroad contingent fund so to be recoverable by and paid to the Commission and all accretions thereof shall be a revolving fund and shall be administered by the Commission. It shall be used by the Commission in furtherance of the public interest in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers, as hereinafter provided. Any moneys in the fund not so employed shall be invested in obligations of the United States or deposited in authorized depositaries of the United States subject to the rules promulgated from time to time by the Secretary of the Treasury relating to Government deposits.

(11) A carrier may at any time make application to the Commission for a loan from the general railroad contingent fund, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operations, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

(12) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and

value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may make a loan to the applicant from such railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear interest at the rate of 6 per centum per annum, payable semi-annually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

(13) A carrier may at any time make application to the Commission for the lease to it of transportation equipment or facilities, purchased from the general railroad contingent fund, setting forth the kind and amount of such equipment or facilities and the term for which it is desired to be leased, the uses to which it is proposed to put such equipment or facilities, the present and prospective ability of the applicant to pay the rental charges thereon and to meet the requirements of its obligations under the lease, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of leasing such equipment or facilities to the applicant as the Commission may deem pertinent to the inquiry.

(14) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the leasing to the applicant of such equipment or facilities, in whole or in part, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant is such as to furnish reasonable assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under such lease, the Commission may lease such equipment or facilities purchased by it from the general railroad contingent fund, to the applicant for such length of time, and under such terms and conditions as it may deem proper. The rental charges provided in every such lease shall be at least sufficient to pay a return of 6 per centum per annum, plus allow-

ing for depreciation determined as provided in paragraph (5) of Section 20 of this act, upon the value of the equipment or facilities leased thereunder. All rental charges and other payments received by the Commission in connection with such equipment and facilities, including amounts received under any sale thereof, shall be placed in the general railroad contingent fund.

(15) The Commission may from time to time purchase, contract for the construction, repair and replacement of, and sell, equipment and facilities, and enter into and carry out contracts and other obligations in connection therewith, to the extent that moneys included in the general railroad contingent fund are available therefor, and in so far as necessary to enable it to secure and supply equipment and facilities to carriers whose applications therefor are approved under the provisions of this section, and to maintain and dispose of such equipment and facilities.

(16) The Commission may from time to time prescribe such rules and regulations as it deems necessary to carry out the provisions of this section respecting the making of loans and the lease of equipment and facilities.

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

(18) Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad may apply to the Commission for permission to retain for a period not to exceed ten years all or any part of its earnings derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may, in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission.

EXHIBIT NO. 12.

TRANSPORTATION ACT, 1920, APPROVED FEBRUARY 28, 1920, 41 STAT. L., 494, SECTION 416, SUBDIVISION 1.

Sec. 15. (As amended June 29, 1906, June 18, 1910, and February 28, 1920.) (1) That whenever, after full hearing, upon a complaint made as provided in Section 13 of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this act for the transportation of persons or property or for the transmission of messages as defined in the first section of this act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

EXHIBIT NO. 13.

TRANSPORTATION ACT, 1920, APPROVED FEBRUARY 28, 1920, 41 STAT. L., 484, SECTION 418, SUBDIVISIONS 1, 2, 3, 4.

SEC. 13. (1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or territory at the request of such commissioner or Commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing

concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever in any investigation under the provisions of this act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the co-operation, services, records, and facilities of such State authorities in the enforcement of any provision of this act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

EXHIBIT NO. 14.

TRANSPORTATION ACT, 1920, APPROVED FEBRUARY 28, 1920, STAT. L., 469, SECTIONS 300 TO 316.

SEC. 300. When used in this title—

(1) The term "carrier" includes any express company, sleeping car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under Section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) The term "commerce" means commerce among the several States or between any State, territory, or the District of Columbia and any foreign nation, or between any territory or the District of Columbia and any State, or between any territory and any other territory, or between any territory and the District of Columbia or within any territory or the District of Columbia, or between points in the same State, but through any other State or any territory or the District of Columbia or any foreign nation; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employes and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

SEC. 301. It shall be the duty of all carriers and their officers, employes, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employes or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employes or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board

which under the provisions of this title is authorized to hear and decide such dispute.

Sec. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employes or subordinate officials of carriers, or organization or group of organizations thereof.

Sec. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employes or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employes or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in Section 301, between the carrier and its employes or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of Section 302, represented upon any such Adjustment Board.

Sec. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employes and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employes in such manner as the Commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate. Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

SEC. 305. If either the employes or the carriers fail to make nominations and offer nominees in accordance with the regulations of the Commission, as provided in paragraphs (1) and (2) of Section 304, within thirty days after the passage of this act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment, by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in the interest with the carriers or employes thereof, whichever he is to represent.

SEC. 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employes or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board, but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by any organization of employes or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of Section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of em-

ployes or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employes or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide any dispute involving grievances, rules, or working conditions which is not decided as provided in Section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of Section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or oganization of employes or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employes or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employes or subordinate officials of carriers, not decided as provided in Section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of Section 301, of any dispute with respect to wages or salaries of employes or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least five of the nine members of the Labor Board: provided, that in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and

shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employes or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;

(2) The relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

SEC. 308. The Labor Board—

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between carriers and their employes, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employes, and shall gather, compile, classify, digest and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index digest thereof.

SEC. 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

SEC. 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpoena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply with any subpoena or in the case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United State District Court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpoena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employe, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account,

record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employe, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employe of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

SEC. 312. Prior to September 1, 1920, each carrier shall pay to each employe or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employe or subordinate official immediately preceding 12.01 a. m., March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employe or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 313. The Labor Board, in case it has reason to believe

that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employe or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

SEC. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil service laws, appoint and remove such officers, employes, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, employes, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

SEC. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

SEC. 316. The powers and duties of the Board of Mediation and Conciliation created by the act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

Exhibit "A" is a statement showing valuations of Class I carriers so far reported by the Interstate Commerce Commission, under the valuation section of the act to regulate commerce, of railways in the Western Group (including the Mountain-Pacific Group for valuation purposes) as defined by the Interstate Commerce Commission in its decision in Ex Parte No. 74. The statement shows such valuations separately for those lines wholly within the State of Texas and those outside of the State of Texas, but within the territorial railway group named above, that is, the Western and Mountain-Pacific Group.

The data upon which this statement is based comes mainly from the record in Ex Parte No. 74 and particularly the Exhibit No. 3 of Hon. Clifford Thorne, page 3908 of the stenographer's minutes, which exhibit originally came from the reports of the Division of Valuation of the Interstate Commerce Commission. To the railways shown in that exhibit we have added the reports of the Atchison, Topeka & Santa Fe System and the lines of that system in Texas, separately, taken from reports of the Interstate Commerce Commission served upon officials of the State of Texas in obedience to mandates of the Valuation Section of the Act to Regulate Commerce.

This statement reflects the findings of the Interstate Commerce Commission, tentatively served, upon the cost to reproduce the railway properties new plus the value of land as found by that Commission. This means that the amount shown for each line of railway is its value based upon what, under all conditions, including costs of labor and material at the time of the inquiry, it would cost to reproduce, replace or rebuild the physical property, new, and in kind, could the property, for the purpose of the inquiry, be assumed not to exist. In other words, it is the estimated cost to produce a similar property upon the location of the existing railway, using new materials similar to the kind of materials used in the construction of the railway under investigation. To this cost to reproduce new is added the market value of land, the title of which is vested in the railway company and used as right-of-way or held for railway purposes.

The valuations here shown are not complete as to the entire railway mileage of the territory embraced in the boundaries of Texas or in the Western and Mountain-Pacific Group for the reason that work of the Interstate Commerce Commission under the Valuation Act is not yet complete. However, the mileage, so far reported is sufficiently large and territorially so distributed and the lines covered of sufficient importance to reflect conclusively the relation of values based upon the cost of construction per mile of road in Texas and in the Western and Mountain-Pacific Group outside of Texas.

From this statement it will be seen that the average cost per mile of road of lines wholly within Texas amounts to $36,527 while the same unit outside of Texas amounts to $53,780. Expressed in different terms, the lines outside of Texas are higher in cost to reproduce plus value of land by 47.25 per cent than the

lines wholly within Texas upon the same basis and according to the same authority.

The cause of this disparity may be traced to the enjoyment by Texas of more favorable geographical location, being upon tidewater, and having ocean freights and enjoying a mild climate which permits all the year round work, unbroken by severe winters; and by favorable topographical and soil conditions. The surface of Texas is almost unbroken by mountains while other parts of the general groups contain the entire Rocky Mountain region and Sierra Nevada ranges and the desert regions of the United States. In addition to this Texas possesses large timber resources and is a large producer of foodstuffs and fuel. Its labor supply is large within itself and it has Mexico with its large Peon population and cheap labor upon its borders to draw from for laborers. These conditions contribute to economical construction of railways.

EXHIBIT "A."

Comparative Statement Showing Valuations, Basis of "Cost to Reproduce, New," Plus Ascertained Value of Land, Taken from Reports of Division of Valuation of the Interstate Commerce Commission, Tentztively Served, of Lines of Railway in the Western Group Outside of Texas, and Those Wholly Within Texas.

Report File No.	Name of Carrier.	Mileage	Cost to reproduce new—plus value of land where land reports have been served.	Remarks.
	Lines Outside of Texas.			
37	Arizona Eastern	374	$ 13,310,678	
91	Chicago, Rock Island & Pacific	7,218	392,361,984	
193	Atchison, Topeka & Santa Fe	8,761	530,216,746	Includes no value of land—report not yet served.
108	Duluth, South Shore & Atlantic	537	20,440,192	
5	Kansas City Southern	799	45,505,114	
12	San Pedro, Los Angeles & Great Lake	990	47,480,777	
127	Minneapolis, St. Paul & Saul St. Marie	3,146	109,800,987	Includes no value of land—report not yet served.
94	Louisiana Railway & Navigation Co	331	11,339,647	
106	Green Bay & Western	298	7,383,334	
7	New Orleans, Texas & Mexico	174	9,957,420	
123	Northern Pacific	506	37,536,368	Includes no value of land—report not yet served.
110	Mineral Range Railroad	64	3,375,565	
135	Oregon Short Line	2,129	118,443,534	
100	Oregon-Washington Railroad & Navigation Co	2,038	137,414,129	
90	St. Louis Southwestern	742	33,228,312	
79	Spokane International	140	5,341,586	
136	Texas & Pacific	802	19,064,047	Includes no value of land and no equipment.
10	Western Pacific	939	70,739,340	
	Totals	29,991	$ 1,612,939,760	
	Total per mile		53,780	
	Lines Wholly Within Texas.			
91	Chicago, Rock Island & Gulf	464	$ 16,727,565	
193	Atchison, Topeka & Santa Fe Lines	2,396	88,608,482	Includes no value of land—report not yet served.
5	Kansas City Southern	79	5,508,269	Includes value of Port Arthur Channel & Dock Co.
12	Trinity & Brazos Valley	303	11,030,136	
136	Texas & Pacific	1,051	32,345,813	Includes no value of land and equipment.
90	St. Louis Southwestern	837	33,137,170	
	Totals	5,130	$ 187,457,435	
	Total per mile		36,521	
	Value per mile, lines outside of Texas		$ 53,780	
	Value per mile, lines within Texas		36,521	

Correct: R. D. PARKER,
Engineer, Railroad Commission of Texas.

Exhibit "B" is designed to show the cost per mile to reproduce new the railway properties in the United States by groups designated by the Interstate Commerce Commission in Ex parte No. 74 as reported by he Interstate Commerce Commission so far as its work has progressed, under the Valuation Section of the Act to Regulate Commerce. The statement is brief and speaks for itself as to its source and as to the information intended to be shown.

EXHIBIT "B"

Statement of Values of Railway Property in the United States by Groups Fixed by the Interstate Commerce Commission in Ex Parte 74 as so far Reported by the Interstate Commerce Commission Under the Valuation Section of the Act to Regulate Commerce.

	Mileage.	Total cost to reproduce—plus land value.	Value per mile.
Western Group	41,417	$ 2,233,668,91	$ 53,931
Southern Group	7,866	364,453,811	46,206
Eastern Group	12,784	1,207,537,647	94,457
Totals	62,067	$ 3,805,659,549	$ 61,315

Note.—The above statement made from Clifford Thorne's Exhibit No. 9 (Exparte 74) Stenographer's Minutes, page 3908 & c, the totals for the Western Group having added to the totals from the Thorne Exhibit the value of the Atchison, Topeka & Santa Fe System, lately reported to the State of Texas by the Interstate Commerce Commission.

Correct: R. D. PARKER,
Engineer, Railroad Commission of Texas.

State of Texas,
County of Travis.

Before me, Vance Stockton, notary public in and for Travis County, Texas, personally appeared R. D. Parker, known to me to be the person whose name is subscribed to the foregoing instruments, and who being by me duly sworn, deposes and says that the foregoing Exhibits A and B were prepared and compiled by him and that the additions and subtractions therein made and compilation is the work of his own hand, and that the facts set forth in the statements and such calculations within the foregoing instruments are true and correct according to his knowledge and belief.

In testimony whereof witness my hand and official seal this the 17th day of May, A. D. 1921.

(Seal) VANCE STOCKTON,
Notary Public, Travis County, Texas.

Exhibit "C" is a statement of property investment by carriers in their railway properties in the Western Group (I. C. C., Ex parte 74) outside of the State of Texas; and the property investment in railways within the State of Texas.

The statistics for railways in the Western Group, outside of Texas, are taken from Wettling's Exhibit No. 1, Ex parte 74, stenographer's minutes, page —, and are as of date October 31, 1919.

The statistics for lines exclusively in the State of Texas are taken from the Annual Reports of Railway Companies to the Railroad Commission of Texas, certified under oath, and are as of date December 31, 1919.

It will be noted that the dates above are so close together as to be comparable for the reason that in the two months, October 31, 1919, to December 31, 1919, the investment account would not be changed to an extent which would appreciably affect the results in average investment per mile of road.

Materials and supplies are included in the totals in both cases, that is, the amount invested in such items are added to the property investment in lines outside of Texas and lines inside of Texas. The "cost of government allocated equipment" is included only in the statistics for lines outside of Texas, and, in fact, this item is in the main only chargeable to lines outside of Texas. This item is practically all assigned to Class I carriers, and so far as the Texas lines are concerned, following precedent, this item may be expected never to appear in the accounts of Texas railroads, as in most cases for equipment operated in Texas, the bulk of the investment is carried in system accounts or in holding companies and the use of equipment used by Texas lines paid for in rentals under lease or rental contracts.

From this Exhibit "C" it will be seen that the investment per mile of road owned is as follows:

Property investment, all lines in Western Group.....$66,241
Property investment, Western Group, outside of Texas.... 69,052
Property investment, lines exclusively in Texas..... 42,829

Thus it is shown that the property investment, according to the carriers' own figures, are 61.2 per cent greater for lines outside of Texas than for lines within the State of Texas.

EXHIBIT "C."

	Miles owned Oct. 31, 1919.	Total property investment Exhibit No. 1, Exparte 74, Oct. 31, 1919.		Miles owned in Texas Dec. 31, 1919.	Total property investment in Texas Dec. 31, 1919.		Miles owned outside of Texas Texas.	Total property investment outside of Texas.	
		Investment.	Per mile owned.		Investment.	Per mile owned.		Investment.	Per mile owned.
Atchison, Topeka & Santa Fe System	11,325 70	$ 777,937,827	$ 68,688	2,392 69	$ 78,942,021	$ 32,993	8,933 01	$ 698,995,806	$ 78,249
Chicago, Rock Island & Santa Fe System	7,689 27	392,426,762	51,036	468 34	18,425,292	39,128	7,220 93	374,101,470	51,788
El Paso & Southwestern System	934 95	59,162,518	63,279	4 69	3,563,170	759,738	930 26	55,599,348	59 768
Kansas City, Mexico & Orient	737 00	29,290,905	39,727	465 75	6,911,478	14,839	271 25	22,368,529	82,465
Kansas City Southern	845 38	102,094,687	120,768	93 32	4,516,425	48,397	752 06	97,578,262	129,748
Missouri, Kansas & Texas	3,612 60	251,687,053	69,669	1,619 36	75,066,897	46,356	1,993 24	176,620,156	88,610
Missouri, Oklahoma & Gulf	326 04	12,729,889	39,044	9 10	371,501	40,824	316 94	12,358,388	38,993
New Orleans, Texas & Mexico—Gulf Coast Lines	820 80	36,297,791	44,222	648 08	20,618,004	31,814	172 72	15,679,787	90,781
St. Louis & San Francisco System	5,084 83	387,995,812	76,305	326 41	10,984,195	33,652	4,758 42	377,011,617	79,230
St. Louis Southwestern System	1,583 10	111,556,724	70,467	830 98	33,847,804	40,732	752 12	77,708,920	103,320
Southern Pacific System	10,955 00	1,949,741,139	95,823	2,888 20	157,172,582	54,417	8,066 71	892,568,557	110,648
Texas & Pacific	1,851 20	125,074,345	67,564	1,038 53	69,478,696	66,891	812 67	55,595,849	68,411
	45,765 87	$3,335,984,754	$ 72,892	10,785 54	$ 479,798,065	$ 44,485	34,980 33	$2,856,186,680	$ 81,651
Fort Worth & Denver City	454 14	$ 28,153,704	$ 61,993	454 14	$ 27,105,408	$ 59,685			
International & Great Northern	1,106 00	44,434,649	40,176	1,107 38	41,268,959	39,976			
San Antonio & Aransas Pass	727 67	24,780,518	34,055	727 67	25,074,205	34,458			
Trinity & Brazos Valley	302 82	11,631,797	38,412	302 82	11,469,680	37,876			
Wichita Valley Railway System	256 90	5,495,509	21,392	256 90	5,470,741	43,287			
Abilene & Southern	72 20	$ 1,109,290	$ 15,364	72 17	$ 1,119,727	$ 15,515			
Galveston, Houston & Henderson	47 33	3,938,729	82,218	47 33	3,975,265	83,999			
Gulf, Texas & Western	99 10	2,569,587	25,878	99 10	2,567,796	25,911			
Houston & Brazos Valley	28 40	1,006,141	35,428	28 40	1,010,505	35,578			
Quanah, Acme & Pacific	78 92	2,128,697	26,973	78 92	1,980,675	25,224			
Texas Mexican	162 00	5,280,149	32,594	161 85	5,336,744	32,974			
Weatherford, Mineral Wells & Northwestern	41 20	991,026	24,054	43 61	983,095	22,527			
Angelina & Neches River	30 20	$ 259,467	$ 8,592	30 63	$ 263,301	$ 8,596			
Artesian Belt	42 23	560,839	13,281	42 23	116,291	2,754			
Denison & Pacific Suburban	7 85	228,146	29,063	7 85	226,411	28,842			
Nacogdoches & Southeastern	14 00	253,452	18,104	14 00	254,211	18,158			
Texas Short Line	12 85	290,667	22,620	12 85	292,101	22,732			
	3,483 81	$ 133,103,367	$ 38,206	3,487 88	$ 131,525,028	$ 37,709			
Total of Classes 1, 2, and 3, Texas—roads included in Exhibit No. 1, Exparte 74	49,249 68	$3,469,088,121	$ 70,439	14,273 42	$ 611,323,093	$ 42,829			
Total of Classes 1, 2, and 3, all—roads included in Exhibit No. 1, Exparte 74	133,187 51	$ 8,822,522,345	66,241	14,273 42	611,323,093	42,829	118,914 09	$8,211,199,252	$ 69,052

Correct: J. R. MOORE,
Auditor, Railroad Commission of Texas.

EXHIBIT "C"—Continued.

	Miles owned Oct. 31, 1919.	Total property investment.	Per mile of road.	Miles owned Dec. 31, 1919, Tex.	Total mileage owned.	Investment in road and equipment Dec. 31, 1919.	Material and supplies Dec. 31, 1919	Total property investment Dec. 31, 1919	Total per mile of road owned.	Total investment in Texas Dec. 31, 1919
Atchison, Topeka & Santa Fe	11,325 70	$ 777,937,827	$ 68,688							
Gulf, Colorado & Santa Fe				1,144 77	1,243 56	$ 46,868,261	$ 3,341,832	$ 50,210,093	$ 40,376	
Cane Belt				107 96	107 96	1,555,288		1,555,288	14,406	
Concho, San Saba & Llano Valley				59 65	59 65	871,288		871,288	14,607	
Gulf, Beaumont & R. C.				62 59	62 59	2,368,494		2,368,494	37,841	
Gulf, Beaumont & Great Northern				77 78	77 78	1,901,927		1,901,927	24,453	
Gulf & Interstate of Texas				70 31	70 31	832,191		832,191	11,836	
Jasper & Eastern				17 45	81 42	1,901,967		1,901,967	23,360	
Panhandle & Santa Fe				124 92	124 92	5,500,966	498,493	5,999,459	48,026	
Pecos & North Texas				570 71	570 71	15,497,859		15,497,859	27,155	
Pecos River Railroad				54 24	54 24	1,415,077		1,415,077	26,089	
Southplains & Santa Fe				102 31	102 31	1,757,076		1,757,076	17 174	
				2,392 69	2,555 45	$ 80,470,394	$ 3,840,325	$ 84,310,719	$ 32,993	78,942,021
Atchison, Topeka & Santa Fe	11,325 70	$ 777,937,827	$ 68,688							
Texas Lines	2,392 69	78,942,021	32,993							
	8,933 01	$ 698,995,805	$ 78,249							
El Paso & Southwestern	934 95	159,162,518	$ 63,279							
El Paso & Southwestern of Texas	4 69	563,170	759,738	4 69	4 69	$ 3,563,170		$ 3,563,170	$ 759,738	
	930 26	$ 55,599,348	$ 59,768							
Kansas City, Mexico & Orient	737 00	$ 29,280,007	$ 39,729							
Kansas City, Mexico & Orient of Texas	465 75	6,911,478	14,839	465 75	465 75	$ 6,870,204	$ 41,274	$ 6,911,478	$ 14,839	
	271 25	$ 22,368,529	$ 82,465							
Kansas City Southern	845 38	$ 102,094,687	$ 120,768							
Texarkana & Fort Smith	93 32	4,516,425	48,397	93 32	207 06	$ 7,695,327	$ 44	$ 7,695,371	$ 37,165	14,516,435
	752 06	$ 97,578,262	$ 129,748							
Missouri, Kansas & Texas	3,612 60	$ 251,687,053								
Missouri, Kansas & Texas of Texas				1,118 61		$ 57,638,455	$ 4,268,442	$ 61,906,897	$ 55,343	
Beaumont & Great Northern				48 31		891,066		891,066	18,449	
Dallas, Cleburne & Southwestern				9 82		160,964		160,964	16,391	
Denison, Bonham & Northern				24 15		385,956		385,956	15,982	
San Antonio Belt & Terminal				7 31		2,469,749		2,469,749	337,859	

Texas Central				308 72		6,621,231		6,621,231	21,447	
Wichita Falls Railway				17 98		614,731		614,731	34,190	
Wichita Falls & Northwestern of Texas				17 10		844,417		844,417	49,381	
Wichita Falls & Southern				52 36		931,166		931,166	17,784	
Wichita Falls & Wellington of Texas				15 00		240,720		240,720	16,048	
	3,612 60	$ 251,687,053	$ 69,669	1,619 36		$ 70,798,455	$ 4,268,442	$ 75,066,897	$ 46,356	†76,066,897
	619 36	75,066,897	46,356							
	1,993 24	$ 176,620,156	$ 88,610							
Gulf Coast Lines	820 80	$ 36,297,791	$ 44,222							
Beaumont, Sour Lake & Western				84 29		$ 3,153,234		$ 3,153,234	$ 37,409	
Orange & Northwestern				61 55		1,229,177	596	1,229,683	19,979	
St. Louis, Brownsville & Mexico				502 24		15,722,881	512,206	16,235,087	32,325	
	820 80	$ 36,297,791	$ 44,222	648 08		$ 20,105,292	$ 512,712	$ 20,618,004	$ 31,814	
	648 08	20,618,004	31,814							
	172 72	$ 15,679,787	$ 90,781							
St. Louis & San Francisco Railway	084 83	$ 387,995,812								
Brownwood, North & South					17 65	$ 288,217		$ 288,217	$ 16,330	
Fort Worth & Rio Grande					223 44	7,535,861	675	7,536,536	33,730	
St. Louis, San Francisco & Texas					85 32	2,803,662	355,780	3,159,442	37,030	
	5,084 83	$ 387,995,812	$ 76,305		326 41	$ 10,627,740	$ 356,455	$ 10,984,195	$ 33,652	
	326 41	10,984,195	33,652							
	4,758 42	$ 377,011,617	$ 79,230							
St. Louis Southwestern System	1,583 10	$ 111,556,724								
St. Louis Southwestern of Texas					694 93	$ 29,423,989	$ 1,230,133	$ 30,654,122	$ 44,110	
Eastern Texas					30 30	460,804	689	461,493	15,231	
Stephenville, North & South					105 73	2,732,189		2,732,189	25,841	
	1,583 10	$ 111,556,724	$ 70,467		830 98	$ 32,616,982	$ 1,230,822	$ 33,847,804	$ 40,732	
	830 98	33,847,804	40,732							
	752 12	$ 77,708,920	$ 103,320							
	10,955 00	$1,049,741,139								
Southern Pacific System					1,377 21	$ 78,072,343	$ 2,754,204	$ 80,826,547	$ 58,689	
Galveston, Harrisburg & San Antonio					856 40	41,951,598	1,398,864	43,350,462	50,619	
Houston & Texas Central					190 94	5,643,031	147,238	5,790,269	30,325	
Houston, East & West Texas					463 74	23,240,830	3,964,474	27,205,304	58,665	
Texas & New Orleans										
	10,955 00	$1,049,741,139	$ 95,823		2,888 29	$148,907,802	$ 8,264,780	$157,172,582	$ 54,417	
	2,888 29	157,172,582	54,417							
	8,066 71	$ 892,568,557	$ 110,648							

EXHIBIT "C"—Continued.

	Miles owned Oct. 31, 1919	Total property investment.	Per mile of road.	Miles owned Dec. 31, 1919, Tex.	Total mileage owned.	Investment in road and equipment Dec. 31, 1919	Material and supplies Dec. 31, 1919	Total property investment Dec. 31, 1919.	Total per mile of road owned.	Total investment in Texas Dec. 31, 1919
Texas & Pacific	1,851.20	$ 125,074,545	$ 67,561	1,038.53	$ 852.59	$117,700,308	$ 6,239,794	$123,940,102	$ 66,961	$ 69,478,696
	1,038.53	69,478,696	66,901							
	812.67	$ 55,595,849	$ 68,411							
Chicago, Rock Island & Pacific	7,689.27	$ 392,426,762	$ 51,036							
Chicago, Rock Island & Gulf	468.34	18,325,292	39,128		468.34	$ 17,971,479	$ 353,813	$ 18,325,292	$ 39,128	
	7,220.93	$ 374,101,470	$ 51,788							
Missouri, Oklahoma & Gulf	326.04	$ 12,729,889	$ 39,044							
Missouri, Oklahoma & Gulf of Texas	9.10	371,501	40,824		9.10	$ 371,501		$ 371,501	$ 40,824	
	246.94	$ 12,358,388	$ 39,903							

Mileage. (Actual.

EXHIBIT "C"—Continued.

	Miles owned Oct. 31, 1919.	Total property investment Oct. 31, 1919.	Per mile of road.	Miles owned Dec. 31, 1919.	Investment in road and equipment Dec. 31, 1919.	Material and supplies Dec. 31, 1919.	Total property investment Dec. 31, 1919.	Per mile of road Dec. 31, 1919.
Fort Worth & Denver City	454 14	$ 28,153,701	$ 61,993	454 14	$ 25,978,380	$ 1,127,028	$ 27,105,408	$ 59,685
International & Great Northern	1,106 00	44,451,649	40,176	1,107 38	41,940,657	2,328,302	44,268,959	39,976
San Antonio & Aransas Pass	727 67	24,780,318	34,055	727 67	24,419,478	654,727	25,074,205	34,458
Trinity & Brazos Valley	302 82	11,631,797	38,412	302 82	11,343,141	126,549	11,469,690	37,876
Wichita Valley Railway	256 90	5,495,569	21,392	52 20	1,899,509	43,287	1,942,796	37,218
Abilene & Northern				38 70	534,031		534,031	14,316
Stamford & Northwestern				82 50	1,947,552		1,947,552	23,243
Wichita Falls & Oklahoma				22 80	281,469		281,469	12,345
Wichita Valley Railroad				60 70	818,180		818,180	13,479
				256 90	$ 5,470,741	$ 43,287	$ 5,514,028	$ 21,464
Abilene & Southern	72 20	$ 1,109,200	$ 15,364	72 17	$ 1,109,243	$ 10,484	$ 1,119,727	$ 15,515
Galveston, Houston & Henderson	47 33	3,938,729	82,218	47 33	3,888,268	86,997	3,975,265	83,995
Gulf, Texas & Western	99 10	2,560,587	25,838	99 10	2,508,550	59,246	2,567,796	25,910
Houston & Brazos Valley	28 40	1,006,141	35,428	28 40	985,181	25,224	1,010,405	35,571
Quanah, Acme & Pacific	78 92	2,128,697	26,973	78 92	1,976,046	14,629	1,990,675	25,224
Texas Mexican	162 00	5,280,149	32,594	161 85	5,218,722	118,022	5,336,744	32,974
Weatherford, Mineral Wells & Northwestern	41 20	991,026	24,054	43 64	957,756	25,339	983,095	22,527
Angelina & Neches River	30 20	259,467	8,592	30 63	259,620	3,684	263,304	8,596
Artesian Belt	42 23	560,839	13,281	42 24	109,576	6,715	116,291	2,754
Denison & Pacific Suburban	7 85	228,146	29,063	7 85	226,411		226,411	28,842
Nacogdoches & Southeastern	14 00	253,452	18,104	14 00	247,721	6,490	254,211	18,158
Texas Short Line	12 85	290,667	22,620	12 85	290,832	1,269	292,101	22,732

Exhibit "D," taken from statistical report of the Interstate Commerce Commission, shows property investment of Class I carriers and their subsidiaries for the year ending December 31 1918, for all lines in the Western Group (see text 32nd Annual Report, I. C. C., December 31, 1918). The statement, Exhibit "D," also shows for purpose of comparison the investment in Class I carriers and their subsidiaries in the Western Group, but lying outside of Texas, from the same source and as of the same date.

The statement shows in addition to the above, and also for the purpose of comparison, the property investment in Class I carriers wholly within the State of Texas, taken from the returns of carriers to the Railroad Commission of Texas in their annual reports for the year ending December 31, 1918. (See Table No. 9, Annual Report, Railroad Commission of Texas, for the year ending December 31, 1918.)

The following results are shown in this table in unit per mile of road owned:

Investment, Class I carriers, all lines in Western Group	$65,741
Investment, Class I carriers, exclusively in Texas	47,261
Investment, Class I carriers, Western Group, outside of Texas	67,839

EXHIBIT "D."

	Miles of road represented.	Investment in road and equipment, Text. 32 Annual Report I. C. C. Dec. 31, 1918.		Miles of road represented in Texas.	Investment in road and equipment, Class 1 and Subsidiary to Class 1, in Texas Table No. 9, R. R. Com. Annual Report, Dec. 31, 1918.		Miles of road outside of Texas.	Investment in road and equipment outside of Texas, Dec. 31, 1918.	
		Investment.	Per mile.		Investment.	Per mile.		Investment.	Per mile.
Western District—Class 1	110,631 07	$7,160,607,543							
Western District—Subsid. to Class 1	15,025 83	1,100,202,688							
	125,656 90	$8,260,810,231	$ 65,741	12,811 25	$ 605,466,136	$ 47,261	$ 112,845 65	$7,655,344,095	$ 67,839

Exhibit "E" is a statement taken from text of thirty-second annual report of the Interstate Commerce Commission for the year ending December 31, 1918, and shows the property investment in Class I carrier property, and the property of their subsidiaries, in the United States by groups as follows:

Investment per mile of road owned, Eastern Group.....$132,350
Investment per mile of road owned, Western Group.... 65,741
Investment per mile of road owned, Southern Group.... 68,911
Investment per mile of road owned, all groups..... 82,157

EXHIBIT "E."

	Miles of line represented	Investment in road and equipment, Text 32nd Annual Report I. C. C. Dec. 31, 1918.	
		Investment	Per mile
Eastern District, Class I	30,278.38	$ 5,163,818,362	
Eastern District Subsidiary, Class I	15,586.51	1,700,509,416	
Total Eastern District	45,864.89	$ 6,864,327,778	$ 132,350
Southern District, Class I	35,246.17	$ 2,547,928,629	
Southern District Subsidiary, Class I	5,569.18	264,020,146	
Total Southern District	40,806.35	$ 2,811,908,775	$ 68,911
Western District, Class I	110,631.07	$ 7,160,607,543	
Western District Subsidiary, Class I	15,025.83	1,100,202,688	
Total Western District	125,656.90	$ 8,260,810,231	$ 65,741
Total United States	218,328.14	$ 17,937,136,784	$ 82,157

State of Texas,
County of Travis.

Before me, Vance Stockton, notary public in and for Travis County, Texas, personally appeared J. R. Moore, Auditor of the Railroad Commission of Texas, known to me to be the person whose name is subscribed to the foregoing instruments and who being by me duly sworn deposes and says that the foregoing Exhibits C, D, and E were prepared and compiled by him and that the additions and subtractions therein made and computation is the work of his own hand and that the facts set forth in the statements and such calculations within the foregoing instruments are true and correct according to his knowledge and belief.

In testimony whereof witness my hand and official seal, this the 17th day of May, A. D. 1921.

(Seal) VANCE STOCKTON,
Notary Public, Travis County, Texas.

FILED
DEC 8 1921
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

Original No. 24.

OCTOBER TERM, 1921.

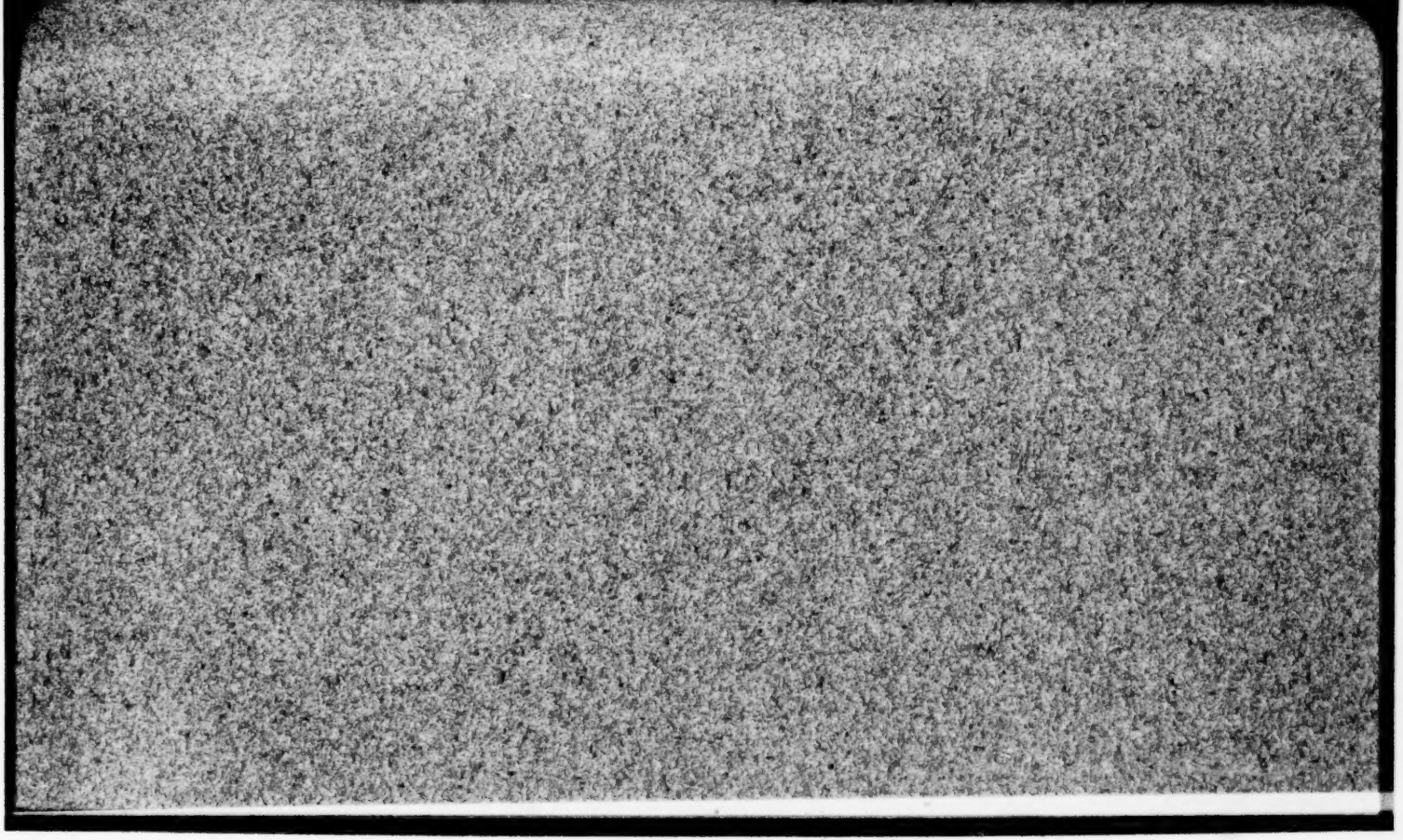
STATE OF TEXAS,

vs.

INTERSTATE COMMERCE COMMISSION AND RAILROAD LABOR BOARD.

BRIEF FOR AMICUS CURIAE.

N. A. Steedman,
E. B. Perkins,
Daniel Upthegrove,
Solicitors for the St. Louis Southwestern Ry. Co. of Texas.



INDEX.

Page

STATEMENT 2

ARGUMENT 2

1. The Supreme Court of United States has no jurisdiction because this is not a suit between a State and citizens of another State 2
2. Since this suit is not a controversy between the State of Texas and citizens of other States, the original jurisdiction of the Supreme Court cannot be invoked by reason of the alleged constitutionality of certain provisions of the Transportation Act 4
3. The Attorney General of the State of Texas has no authority to institute or prosecute this suit 9
4. When a state becomes a litigant, it takes the same position as a private party and is bound by the same rules of law and equity 16
5. The sovereign rights of a State are not included within the rights which a State, as a litigant, may put in issue in the case 18
6. Powers of Congress 32

LIST OF CASES CITED.

CASES: Page

Bankers' Trust Company vs. T. & P. Railway Company, 241 U. S 295, 309 3
Cherokee Nation vs. Ga., 5 Peters, p. 1 25
Cohen vs. Virginia, 6 Wheaton, p. 407, 5 L. Ed. 292 16
Erie Railroad vs. New York, 233 U. S. 671 38
Firstoe vs. Leon & H. Blum, 92 Texas, p. 80 17
Georgia vs. Staunton, et al., 73 U. S., p. 71 24
Gibbons vs. Ogden, 9 Wheaton, p. 1 35
H. E. & W. T. Ry. Co., vs. U. S., 234 U. S. 342 33
Louisiana vs. Texas, 176 U. S., p. 1 28
McCullough vs. Maryland, 4 Wheaton, 316 35
Minnesota Rate Cases, 230 U. S. 352 34
Mondou vs. N. Y. N. H. & H. R. R. Co., 223 U. S., p. 1 35
Muskrat vs. U. S., 219 U. S. 346 30
Northern Pacific Ry. Co. vs. Washington, 222 U. S. 370 37
Oklahoma vs. G. C. & S. F. Railway, 220 U. S. 290 20
Oklahoma vs. A. T. & S. F. Ry. Co., 220 U. S. 276 29
Osborne vs. Bank, 9 Wheat. 819 22
Railroad Tax Cases, 136 Fed. 233 15
Southern Railway vs. Railroad Commission of Indiana, 236 U. S. 439 34
State of California vs. Southern Pacific Company, 157 U. S. 229 6
State vs. Penoyer, 25 L. R. A., p. 862 17
T. & P. Ry. vs. Rigsby, 241 U. S. 33 34
Wisconsin vs. Pelican Insurance Co., 127 U. S. 365 19

IN THE

Supreme Court of the United States

Original No. 24.

OCTOBER TERM, 1921.

STATE OF TEXAS,

vs.

INTERSTATE COMMERCE COMMISSION AND RAILROAD LABOR BOARD.

BRIEF FOR AMICUS CURIAE.

This Brief is presented by N. A. Stedman, E. B. Perkins and Daniel Upthegrove, Solicitors for the St. Louis Southwestern Railway Company of Texas, in support of the motion filed by the Defendants to dismiss the Bill of Complaint, with the

request that they be permitted to file the same for the reason that the questions presented in this cause are of vital interest to said Railroad Company.

STATEMENT.

The statement submitted by Counsel for the Interstate Commerce Commission summarized the Bill of Complaint so fully and completely that it is unnecessary for us to do more than to adopt their statement.

In the progress of their brief and argument, we will make such reference to the allegations and the Bill of Complaint as may be necessary to illustrate the argument presented.

ARGUMENT.

I.

The Supreme Court of the United States Has No Jurisdiction in This Cause Because This Is Not a Suit Between a State and Citizens of Another State.

By Subdivision 2 of Section 2, Article 3, of the Constitution of the United States, it is provided that the Supreme Court shall have original jurisdiction in all cases in which a State shall be a party; and by Subdivision 1 of the same Section and Article, the judicial power of the United States

extends, among other things, to controversies between two or more states; between a State and citizens of another State, and between a State, or the citizens thereof, and foreign States, citizens or subjects. Clearly the only claim that this is a case to which the judicial power extends that can be made with any semblance of reason is that it is a controversy between a State and citizens of another State. With the view doubtless of showing that the Interstate Commerce Commission and the Railroad Labor Board are persons against whom suit may be brought, it is alleged in the bill in this case that each of them is a body corporate. Granting that each of them is a corporation, each owes its existence to an Act of Congress and is consequently a Federal corporation. Accordingly, under the rule that a corporation is a citizen of the government by which it is created, neither the Interstate Commerce Commission nor the Labor Board is a citizen of another State, but each is a citizen of the United States. Decisive of this question is Bankers Trust Company vs. T. & P. Railway Company, 241 U. S. 295, 309, in which it was held that the T. & P. Railway Company, by virtue of its Federal charter, is not a citizen of any State, but is, on the contrary, a citizen of the United States. This being true, we submit is fatal to the original jurisdiction of the Supreme Court of the United States in this case.

II.

Since This Suit Is Not a Controversy Between the State of Texas and Citizens of Other States, the Original Jurisdiction of the Supreme Court of the United States Cannot Be Invoked Because of the Alleged Unconstitutionality of Certain Provisions of the Transportation Act.

Doubtless, the provision of the constitution extending the judicial power to controversies between a state and citizens of another state was inserted to avoid the necessity of a state's resorting, for the assertion of a cause of action in its favor against a citizen of another state, to the courts of the other State, by reason of the danger of the want of impartiality of the courts of the other state. If it be suggested that the objection may be met by giving the inferior Federal Courts in the States of which the adverse parties are citizens original jurisdiction of such controversies, the answer is, that to require a sovereign State to submit itself to the jurisdiction of inferior Federal Courts would not comport with its dignity, in consonance with the statement in Article 81 in the Federalist that, "In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal"; and accordingly provision was made for the exercise by the Supreme Court of original jurisdiction in such cases. A cause of ac-

tion may exist in favor of a state, because of the violation, affecting its justiciable rights, of the Constitution, against one of its own citizens as well as against a citizen of another state, and the result of the assumption by the Supreme Court of original jurisdiction, on the ground of the alleged unconstitutionality of a Statute, would be to authorize a state to sue one of its own citizens in the Supreme Court when a violation of the Constitution is involved. But in litigation of any character with one of its citizens, a State would be at no disadvantage by reason of lack of impartiality of its own courts, and there would therefore be no more reason for its going into a Federal Court for the assertion of its rights than there would be for either of two opposing private litigants. This is stated in recognition of the right of either a State or a private litigant having a cause of action arising under the Constitution or laws of the United States to go into a Federal Court initially for the enforcement of the cause of action, but as to that matter, the State and the private litigant are upon the same plane, and either has the choice of a local State Court or an inferior Federal Court as the tribunal of original jurisdiction, with the right of either to have the question tested by the Supreme Court upon writ of error after an adverse decision by the trial court. When the controversy is between citizens of different states, the citizens of another State may sue originally in the Federal Court to secure him against local prejudice, and likewise a State for the same reason may go into the Federal

Court to enforce a right against a citizen of another State, but, if it desires to sue in a Federal Court because of the danger of prejudice in local courts in another state, out of consideration for its dignity as a sovereign State it shall not be compelled to enter an inferior tribunal but may go into the Supreme Court. In either case, the jurisdiction rests upon the character of the parties, and not at all upon the nature of the case, as will be hereinafter more fully shown.

Turning to the language of the Constitution, it is to be observed that by Subdivision 1 of Section 2 of Article 3, the judicial power extends, among other things, to all cases in law and equity arising under the constitution, and to all cases involving controversies between a State and citizens of another State, and that by Subdivision 2 of the same section and article, it is provided that among other cases, of which the Supreme Court shall have original jurisdiction, are those in which a State shall be a party. While the question under consideration has not arisen in a case exactly similar to the case at bar it did arise and was decided in accordance with the views herein expressed in the case of State of California vs. Southern Pacific Company, 157 U. S. 229, and we submit the decision in that case as decisive of this question. There the State of California brought an original suit in the Supreme Court of the United States against a corporation, which was a citizen of another State. After determining that a citizen of the State of California,

not sued, was an indispensable party, the Court proceeded to decide the case just as if the citizen of the State had been made a defendant, and concluded that the suit could not be maintained, since if any defendant is a citizen of the same State as the plaintiff, the original jurisdiction of the Supreme Court does not attach. In its reasoning, the Court discussed the very question we are considering in the following language:

> "By the first paragraph of section two of article III, of the Constitution it is provided that 'the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; . . . to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states . . .' And by the second clause that 'in all cases affecting ambassadors other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction . . .' The language, 'in all cases in which a state shall be a party,' means in all the cases above enumerated in which a state shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be

exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties and those only. Among those in which jurisdiction must be exercised in the appellate form are cases arising under the Constitution and laws of the United States. In one description of cases the character of the parties is everything, the nature of the case nothing. In the other description of cases the nature of case is everything, the character of the parties nothing."

Addressing itself to the contention that the jurisdiction did not rest exclusively upon a controversy between the State of California and a citizen of another State, but that it was one arising under the Constitution by reason of presenting the question whether a law involved impaired the obligation of a contract, the court, treating the case in the same manner as if the omitted party were before the court, observed:

"We are aware of no case in which this court has announced the conclusion that power is conferred on Congress to authorize suits against citizens of other states joined with citizens of the same state as that of which plaintiff is a citizen to be originally commenced in, or to be removed to, the circuit courts, as arising under the Constitution on the ground indicated, where there is no sep-

arable controversy or the citizens of plaintiff's state are indispensable parties, but we are not called on to consider that question, or whether any Federal question is involved, since the original jurisdiction of this court in cases between a state and citizens of another state rests upon the character of the parties and not at all upon the nature of the case. If by virtue of the subject-matter, a case comes within the judicial power of the United States, it does not follow that it comes within the original jurisdiction of this court. That jurisdiction does not obtain simply because a state is a party. Suits between a state and its own citizens are not included within it by the Constitution; nor are controversies between citizens of different states."

III.

The Attorney General of the State of Texas Has No Authority to Institute and Prosecute This Suit, Since His Duties and Powers, as Defined in the Constitution and Laws of the State of Texas, Do Not Embrace the Bringing and Prosecution of a Suit of This Character.

By Section 22 of Article 4 of the Constitution of Texas, the Attorney General is authorized to represent the State in all suits and pleas in the

Supreme Court of the State in which the State may be a party; to inquire into the charter rights of all private corporations and from time to time, in the name of the State, to take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power, or demanding, or collecting any species of tax, tolls, freight or wharfage, not authorized by law; to seek, when sufficient cause exists, the judicial forfeiture of the charters of corporations; to give legal advice to the Governor and other executive officers, and to perform such other duties as may be required by law. By Article 4413, Revised Civil Statutes, it is made his duty to prosecute and defend all action in the Supreme Court or the Court of Appeals in which the State may be interested and to perform such other duties as may be prescribed by the Constitution and laws. In Article 4418a, it is made his duty to advise the Governor, Heads of Departments, State Boards, Legislative Committees, County Auditors, District and County Attorneys, etc., to advise as to the issuance of bonds, and to institute escheat proceedings in certain cases. By Articles 4427 and 4428, it is made his duty to seek judicial forfeiture of the charters of private corporations, and to inquire into the charter rights of all private corporations and to take the same action in the courts as is provided in the Constitution. By Article 498, it is made his duty to bring suit to forfeiture the charter of Surety Companies under

certain circumstances. By article 500, it is made his duty to sue Surety Companies for the benefit of the beneficiaries. By Article 507, it is made his duty to bring suit for penalties against persons or corporations violating the blacklisting law. By Article 1030, it is made his duty to bring suit for the forfeiture of the Charter of a Public Utility Corporation, under certain circumstances. By Article 1202, it is made his duty to institute quo warranto or other proper proceeding against insolvent incorporations. By Article 1510, it is made his duty under certain circumstances, to bring suit to forfeit charters of bond investment companies and for receivers. By Article 1186, it is made his duty to sue private corporations for penalties for failing to make reports, under certain circumstances. By Article 1180, it is made his duty to bring suits to escheat lands held by corporations in violation of law. By Article 20, it is made his duty to bring suit to escheat lands held by aliens in violation of law. By Article 1313ii, it is made his duty, under certain circumstances, to bring suit to enjoin Building Loan Associations from doing further business and for the appointment of receivers therefor. By Article 3824, it is made his duty to bring suit against foreign Express Companies, under certain circumstances, for refusing to permit the Railroad Commission to inspect records. By Article 4692, it is made his duty to enjoin the use of premises for carrying on Bucket Shops. By Article 4690,

it is made his duty to enjoin the use of premises for immoral purposes. By Article 5249, it is made his duty, under certain circumstances, to institute proceedings for the condemnation of land required by the State for public purposes. By Article 3934½c, it is made his duty to bring suit to enjoin the use of certain premises without fire escapes. By Article 6398, it is made his duty to institute quo warranto proceedings against persons who have usurped offices, as well as Associations acting as corporations without being incorporated, and against railroad companies for charging extortionate rates. By Article 6425, it is made his duty to bring suits against railroad corporations for failing to keep their general offices and machine shops in the State, for the forfeiture of their charters, and for the recovery of penalties. By Article 6424, it is made his duty to bring suit against railroad corporations for any violation of the laws requiring the keeping of offices and machine shops in the State, the keeping of repair shops in the State, the keeping of certain records in the State and the submission of annual reports to the Comptroller or Governor. By Article 6566, it is made his duty to bring suit against any railroad company or receiver for penalties for failing to equip locomotive engines with electric headlights. By Article 6569, it is made his duty to bring suit against railroad companies or receivers for penalties for failing to provide derailing devices. By Article 6575, it is made his

duty to bring suit against any railroad company or receiver for penalties for operating trains without certain crews. By Article 6578, it is made his duty to bring suit against any railroad company or receiver for penalties for failing to provide ash pans. By Article 6585, it is made his duty to bring suit against any railroad company or receiver requiring employees to work more than the specified length of time. By Article 6673, it is made his duty to bring suits against railroad companies or receivers for penalties for failing or refusing to perform any duty imposed by the Commission Act, or for failing or refusing to obey any lawful requirement, order, etc., of the Railroad Commission. By Article 6691, it is made his duty to bring suits against railroad companies or receivers for failing to furnish or exchange cars and transport and deliver same as required by the Railroad Commission. By Article 6705 it is made his duty to bring suit against any railroad company or receiver for neglecting or refusing to comply with any order of the Railroad Commission designating certain kinds of railroad crossings. By Article 6708, it is made his duty to bring suit against any railroad company or receiver for failing to obey an order of the Railroad Commission, relating to the use of more than one locomotive in the operation of trains. By Article 6714, it is made his duty to bring suit against any railroad company or receivers for penalties for failing to equip locomotives, tenders

and cars with grab irons, hand-holds and foot stubs. By Article 6370f, it is his duty to bring suit on bonds for compliance for contracts for public printing. By Article 4780, it is made his duty to bring suits, under certain circumstances, for taxes against Life Insurance Companies. By Article 7404, it is made his duty to bring suit against corporations for failing to pay franchise taxes and for penalties. By Article 7388, it is made his duty to bring suit to recover penalties for failing to pay taxes upon gross receipts. By Article 7424, it is made his duty, under certain circumstances, to bring suit against any person or corporation required to report intangible assets for taxation to the State Tax Board for failing to make such report. By Article 7806, it is made his duty to sue for penalties for the violation of the anti-trust law of the State.

The foregoing enumeration of the duties of the Attorney General is not all-embracing, since to refer to every Statute placing on him the duty to bring suits would serve no useful purpose, but it is sufficient to indicate that the legislative construction of the Constitution is that he has only such powers as are conferred by the Constitution or by Statutes. It is hardly necessary to refer to anything but to the language of the Constitution to determine the powers of the Attorney General, since by that instrument he is authorized to bring the actions specified and to "perform such other duties as may be required by law," which evinces the intention to restrict his

authority to what the Constitution and Legislature prescribe. It may be remarked that while the various Statutes to which we have referred impose duties upon the Attorney General, his powers are derived from his duites, under the statement in the case of State vs. S. P. R. R. Co., 24 Texas 80, 118, that, "It is the duty imposed by law on the officer, who must bring the suit, that constitutes the right to bring and maintain it." In the case of Day Land and Equity Company vs. State, 68 Texas 526, 533, is the following language, referring to the duties of the Attorney General and District Attorneys in Texas: "Finding no express law which authorizes either of those officers to institute and maintain the suit, it would be difficult to hold that either of them had the implied power resulting from the general grants of power or imposition of duties."

It is true that in that case it was held that the Attorney General had the right to bring the suit, but it was because of the fact that the Legislature had recognized his power in suits of that kind. In Railroad Tax Cases, 136 Federal 233, 236, the court held that, since the Constitution of the State of Arkansas provides that the Attorney General "shall perform such duties as may be prescribed by law," the Statutes of the State must be consulted to ascertain what duties the Legislature has seen proper to impose on that officer. Failing to find any Statute authorizing the Attorney General to bring the kind of suit there involved, the Court decided.

IV.

When a State Becomes a Litigant it Takes the Same Position as a Private Party, and is Bound by the Same Rules of Law and Equity.

In passing upon the question of what is a suit, Chief Justice Marshal in the case of Cohen vs. Virginia, 6 Wheaton, at page 407, 5 L. Ed. 292, said:

> "What is a suit? We understand it to be the prosecution or pursuit, of some claim, demand, or request. In law language, it is the prosecution of some demand in a court of justice. The remedy for every species of wrong is, says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' 'The instruments whereby this remedy is obtained, are a diversity of suits and actions, which are defined by the Mirror to be 'the lawful demand of one's right.' Or, as Bracton and Fleta express it, in the words of Justinian, 'jus prosequendi in judicio quod alicui debetur.'' Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a right."

It will be observed that the substance of this quotation is that a suit in law or equity is the pursuit of something to which the Complainant

is entitled. A State can become a party to a suit and can pursue something to which it has a right, but when it does so, it takes the same position as to the law and the rights that can be presented that is occupied by and may be presented by an individual. This is recognized by the Supreme Court of Texas.

> "Announcing the law on this subject, the Supreme Court of the State in the case of Firstoe vs. Leon & H. Blum, 92 Texas Reps. at page 80, said:
>
> > 'A clear understanding of the relation in which the state stands to the purchasers in these contracts will greatly facilitate a proper solution of the questions upon which this case depends. It is well settled that so long as the State is engaged in making or enforcing laws or in the discharge of any governmental function it is to be regarded as a sovereign and has prerogatives which do not appertain to the individual citizen, but when it becomes a suitor in its own courts or a party to a contract with a citizen the same law applies to it as under like conditions governs the contracts of an individual.' "

This announcement of the law by the Supreme Court of Texas is sustained by the opinion of the Supreme Court of Oregon in State vs. Penoyer, —— Oregon, 25 L. R. A., page 862. The court, in closing a very able opinion, uses the following language:

"The contention of the state is that the court must interpose by the extraordinary remedy of injunction, and render nugatory the solemn enactment of a coordinate branch of its government, as in contravention of the fundamental law, without at the same time alleging any facts showing wherein and in what manner the state would be damnified, and without exhibiting any good or sufficient reason for the exercise of such extraordinary power. A mere suggestion that the act complained of is unconstitutional, and that the legislature has exceeded its constitutional limitations, is insufficient to call into requisition a court of equity. 'The court, as such, has no supervisory power or jurisdiction over public officials or public bodies.' People vs. New York Canal Board, supra.

"The state, when equitable relief is sought, such as is prayed for in the present proceeding, must, like private individuals, bring itself within the known and fixed rules of equitable interference before the court will grant its petition."

V.

Under the Rules Established by the Foregoing Decisions, the Sovereign Rights of a State Are Not Included Within the Rights Which a State as a Litigant May Put in Issue in a Case.

A careful examination of the Bill of Complaint in this cause discloses that there are no other rights which the State attempted to put in issue, except

the sovereign rights; the allegations contained in the Bill with reference to the property rights of the State, as to its ownership of a railroad, its business as a shipper, etc., are merely incidental to its sovereign rights. These property rights are not followed up or elaborated so as to show that their infringement is a matter submitted to this court, and if they were so followed up, it would at once appear that this court did not have jurisdiction of a subject matter involved under the uniform holding made by this court as to its original jurisdiction.

Wisconsin vs. Pelican Ins. Co., 127 U. S. 365, 32 L. Ed. 239.

In that case this court, at pages 293-4, L. Ed. 244, said:

> "From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a State and citizens of another State, or of a foreign country, does not extend to a suit by a State to recover penalties for a breach of her own municipal law. This is shown both by the nature of the cases in which relief has been granted or sought, and by Acts of Congress and opinions of this court more directly bearing upon the question."

As to other allegations contained in the Bill of Complaint with reference to property damages to

the citizens of the state generally, the holdings of this court have been that the State could not maintain a suit upon this ground.

In the case of Oklahoma vs. G. C. & S. F. Ry., 220 U. S. 290, 55 L. Ed. 469, this court, at page 301, L. Ed. 474, said:

> "But there is another ground which is equally fatal to the claim that this court may give the relief asked by an original suit brought by the state. In the provisions of the Constitution relating to the judicial power of the courts of the United States, it is provided, as we have seen, that 'in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction.' In Oklahoma vs. Atchison, T. & S. F. R. Co. No. 13, Original, just decided (220 U. S. 277, ante, 165, 31 Sup. Ct. Rep. 134), it was held that a state could not invoke the original jurisdiction of the Court, by suit on its behalf, where the primary purposes of the suit was to protect its citizens generally, against the violation of its laws by the corporations or persons sued; that the above words, 'those in which a state shall be party' were not to be so interpreted as to embrace suits of that kind.' "

From the foregoing we conclude that the State as a litigant occupies the same position as an individual or corporation litigant, and cannot base a suit on its sovereign rights. However, it may be contended that the State may elect to submit its sovereign rights to the consideration and decision

of the judicial branch of the government, and when it does so and the allegations show that these rights have been or will be infringed upon, that the State is entitled to be heard, and upon the establishment of its contention, will be entitled to relief by injunction. In fact, we understand that the Bill of Complaint in this cause is based upon that theory. Accepting that as a theory of the complaint made by the state, we submit the following proposition:

THE EXERCISE OF THE JUDICIAL FUNCTION DOES NOT EXTEND TO THE ADJUDICATION OF POLITICAL OR SOVERIGN RIGHTS WHERE THE PRIVATE RIGHTS OF PERSONS OR PROPERTY ARE NOT INVOLVED.

Section 2, Article III of the Constitution of the United States provides that

> "The judicial Power shall extend to all Cases, in Law and in Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, etc."

The case at bar, being a suit in equity, must present a "case" in equity to be cognizable by this court.

A question respecting the Constitution and Laws of the United States, to become a case, must be presented by a party who asserts his rights under this Constitution or these Laws, in such form as is cognizable by and can be acted on by a court. Osborne

vs. Bank 9 Wheat. 819; 6 L. Ed. 223; Cherokee Nation vs. Ga. 5 Peters 1.

In the case at bar, the Complainant sues in its soverign capacity for itself and "representatively on behalf of its citizens in their soverignty"; and alleges that the suit is of a civil nature arising under the Constitution and Laws of the United States, and is for the purpose of enjoying the Defendants from enforcing certain sections of the Transportation Act of 1920.

The Bill then, in a very careful way, alleges the provisions of the Constitution and Laws of the State of Texas with reference to railroad companies, and the provisions of the Constitution of the United States restricting the powers of the United States and reserving to the state the powers not delegated.

It then summarizes the provisions of the Transportation Act of 1920 which are claimed to infringe upon the rights of the Complainant, and likewise summarizes the provisions of the Constitution of the United States which are claimed to be violated thereby.

It is unnecessary to enumerate or even condense the various allegations contained in the Bill with reference to the foregoing matters for the reason that it is apparent and cannot be denied that the rights set up by the Complainant are the soverign rights of the State; and the injuries alleged to be threatened or suffered by the Complainant are injuries resulting from a violation of its soverign rights; and incidentally, it is alleged that injuries

are suffered by its citizens by reason of the violation of the soverign rights of the State.

Our construction of the Bill of Complaint is supported by the prayer of the Bill wherein Complainant prays

> "That the so-called Transportation Act of 1920, and particularly Section 300 to 316, inclusive, 402 to 407, 416 and 418, 402, subdivisions 18 to 22, 407, subdivisions 1 to 8, 422, subdivisions 1 to 18, 439, subdivisions 1 to 11, be declared invalid, unconstitutional and void; and that the Defendants named herein and constituted bodies corporate be declared and adjudged illegal and without statutory or constitutional authority; and that any and all laws or parts of laws, directing, empowering, regulating the creation, appointment, qualification and terms of service and granting authority to defendants named and the several members thereof be declared invalid, unconstitutional and void and the acts, orders and all things authorized to be done or performed by defendants be declared void, invalid and of no force and effect and without force of law, or if any part of said Transportation Act of 1920 be held to be constitutional, the remaining sections and portions thereof and all other laws in aid thereof be declared invalid, unconstitutional and void; and that the defendants and each of them be enjoined and restrained from enforcing all or such invalid and unconstitutional portions of the laws herein complained of in the State of Texas in such a manner as to interfere with the regulation of internal affairs of the complainant and the enforcement

of its Constitution and its constitutional and valid laws, regulations and contracts, and the constitutional rights of its citizens."

It will be observed that Complainant prays this Court to protect the soverign rights of the State of Texas, by enjoining the Defendants from proceeding to perform acts authorized by Acts of Congress, on the ground that said Acts are unconstitutional.

The grounds of complaint against the acts of Congress enumerated in the foregoing prayer of the bill, as set forth in the bill, are that they authorized the defendants herein to do and perform governmental functions which belonged exclusively to the State of Texas by reason of its sovereign, political rights reserved to it by the Constitution of the United States.

The authority of this court to consider such a question was fully considered and determined in the case of Georgia vs. Stanton, et al., 73 U. S. (6 Wallace 50), 18 L. Ed. 721, wherein a bill was filed in this court praying for an injunction against the Secretary of War, General of the Army and others, and praying that they be restrained from carrying into effect "An Act to provide for a more efficient government of the rebel States." Motion was made to dismiss the bill for want of jurisdiction, which motion was sustained. The opinion of the court is so pertinent and conclusive that we make the following extended quotations therefrom, beginning at page 71:

"This distinction results from the organization of the government into the three great departments, Executive, Legislative and Judicial—and from the assignment and limitation of the powers of each by the Constitution.

"The judicial power is vested in one Supreme Court, and in such inferior courts as Congress may ordain and establish; the political power of the government is the other two departments.

"The distinction between judicial and political power is so generally acknowledged in the jurisprudence both of England and of this country, that we need do no more than refer to some of the authorities on the subject. They are all in one direction. N. Y. vs. Conn., 4 Dall. 4; Nabod of Carnatic vs. E. I. Co., 1 Ves. Jr. 375; 2 Ves. Sr. 446, 447; Cherokee Nation vs. Georgia, 5 Pet. 1."

Again, at page 76, this Court said:

"The remaining question on this branch of our inquiry is whether, in view of the principles above stated, and which we have endeavored to explain, a case is made out in the bill of which this court can take judicial cognizance. In looking into it, it will be seen that we are called upon to restrain the defendants, who represent the executive authority of the government, from carrying into execution certain acts of Congress, inasmuch as such execution would annul and totally abolish the

existing state government of Georgia, and establish another and different one in its place; in other words, would overthrow and destroy the corporate existence of the state, by depriving it of the means and instrumentalities whereby its existence might, and otherwise would, be maintained.

"This is the substance of the complaint, and of the relief prayed for. The bill, it is true, sets out in detail the different and substantial changes in the structure and organization of the existing government, as contemplated in these acts of Congress; which, it is charged, if carried into effect by the defendants, will work this destruction. But they are grievances, because they necessarily and inevitably tend to the overthrow of the state as an organized political body. They are stated, in detail, as laying a foundation for the interposition of the court to prevent the specific execution of them; and the resulting threatened mischief. So in respect to the prayers of the bill. The first is that the defendants may be enjoined against doing or permitting any act or thing, within or concerning the state, which is or may be directed, or required of them, by or under the two acts of Congress complained of; and the remaining four prayers are of the same character, except more specific as to the particular acts threatened to be committed.

"That these matters, both as stated in the body of the bill and in the prayers for relief, call for the judgment of the court upon political questions, and upon rights, not of persons or property, but of a political character,

will hardly be denied. For the rights, for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a state, with all its constitutional powers and privileges. No cases of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the court.

"It is true, the bill, in setting forth the political rights of the state, and of its people to be protected, among other matters, avers that Georgia owns certain real estate and buildings therein, State Capitol, and Executive Mansion, and other real and personal property; and that putting the acts of Congress into execution, and destroying the state, would deprive it of the possession and enjoyment of its property. But it is apparent that this reference to property and statement concerning it, are only by way of showing one of the grievances resulting from the threatened destruction of the state, and in aggravation of it, not as a specified ground of relief. This matter of property is neither stated as an independent ground, nor is noticed at all in the prayers for relief. Indeed, the case, as made in the bill, would have stopped far short of the relief sought by the state, and its main purpose and design given up, by restraining its remedial effect, simply to the protection of the title and possession of its property. Such relief would have called for a very different bill from the one before us."

To the same effect is the case of La. vs. Texas, 176 U. S. 1, 44 L. Ed. 347. This suit was with reference to the quarantine laws adopted by the State of Texas, enforcement of which, the State of Louisiana claimed, was injurious to the business and commerce of the citizens of the State of Louisiana, wherein this court, speaking through its Chief Justice, at page 23, said:

> "Finally, we are unable to hold that the bill may be maintained as presenting a case of controversy 'between a state and citizens of another state.'
>
> "Jurisdiction over controversies of that sort does not embrace the determination of political questions, and, where no controversy exists between states, it is not for this court to restrain the governor of a state in the discharge of his executive functions in a matter lawfully confided to his discretion and judgment. Nor can we accept the suggestion that the bill can be maintained as against the health officer alone on the theory that his conduct is in violation or in excess of a valid law of the state, as the remedy for that would clearly lie with the state authorities, and no refusal to fulfill their duty in that regard is set up. In truth it is difficult to see how on this record there could be a controversy between the state of Louisiana and the individual defendants without involving a controversy between the states, and such a controversy, as we have said, is not presented."

Mr. Justice Harlan concurred in the result reached, and, at pages 26-7, said:

> "Although unable to assent to the grounds upon which the court rests its opinion, I concur in the judgment dismissing the suit solely upon the ground that the State of Louisiana in its sovereign or corporate capacity cannot sue on account of the matters set out in the bill."

The case of Oklahoma vs. A. T. & S. F. Ry., 220 U. S. 276, 55 L. Ed. 465, is to the same effect. At pages 276-7, Mr. Justice Harlan, speaking for the court, said:

> "In the present case, the state seeks to enjoin the defendant company from charging more than the Kansas rates on the transportation of lime, cement, plaster, brick, stone, crude and refined oil. But the state, as such, in its governmental capacity, is not engaged in their sale or transportation, and has no property interest in such commodities. It seeks only, as between the railway company and shippers, by a general, comprehensive decree to enforce certain rates, and to compel the railway company to respect the rights of all of the people of Oklahoma who may have occasion to ship such commodities over the railway."

and then, after quoting from the case of La. vs. Texas, and approving the law as therein announced, dismissed the Bill of Complaint.

On the question of authority of this court to declare an act of Congress unconstitutional, where that is the sole purpose of the suit, the case of Muskrat vs. United States, 219 U. S. 346, was, as this court properly held, a suit to obtain a judicial determination of the constitutional validity of an act of Congress. In answer to the inquiry as to whether or not such a determination was within the judicial power of Congress, this court, speaking through Mr. Justice Day, at page 361, said:

> "We think it is not. That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. The right to declare a law unconstitutional arises because an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority but in fact beyond the power delegated to the legislative branch of the government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a 'case' or 'controversy,' to which, under the Constitution of the United States, the judicial power alone extends."

VI.

There is No Equity in the Bill.

Taking up the questions as presented, in detail, we find that by paragraph XV of the bill, the question of the constitutionality of subdivisions 18 to 22, inclusive, of Section 402 of the Transportation Act of 1920 is attacked. These subdivisions authorize the extension or abandonment of a railroad after the procurement of a Certificate of Public Convenience and Necessity from the Interstate Commerce Commission authorizing the same where it is required or permitted by such public convenience or necessity.

Paragraph XVI of the bill raises the question of the constitutionality of Section 407, which deals with the matter of consolidation of railroads.

Paragraph XVII of the bill attacks the constitutionality of the provisions of the Transportation Act with reference to the issuance of stocks, bonds and other securities as provided for in Section 429.

Paragraph XVIII of the bill attacks the constitutionality of Section 422 of the Transportation Act which authorizes and requires the Interstate Commerce Commission to negotiate, modify, establish or adjust rates, fares, etc., so as to produce a fair return on the value of the railway property.

Paragraph XIX of the bill attacks the constitutionality of Section 416 of the Transportation Act which fixes the conditions under which the

Interstate Commerce Commission may prescribe intrastate rates fares, changes, classifications, regulations and practices so as to remove discrimination, and also the constitutionality of Section 418 of the Transportation Act which deals substantially with the same subject.

It will be observed that all of these questions of the constitutionality of the provisions referred to rest upon the same basis and that is that the provisions of the Act of Congress violate the sovereign rights of the State of Texas.

It will also be observed that the bill does not, in the paragraphs referred to or in any other paragraphs, show that the property rights of complainant have been injured or infringed upon in violation of the Constitution of the United States, so that each one of the charges made against the provisions of the Transportation Act raises questions that we have heretofore discussed, and in our views, should be determined by reason of the authorities heretofore presented in favor of the motion to dismiss.

But, if the court should consider that some of allegations in the bill are sufficient to raise questions other than political questions, then we submit Congress has the power and is authorized to enact the provisions referred to.

Power of Congress.

The power of Congress to enact the Transportation Act is derived from the consideration, as said

in the Minnesota rates cases, 230 U. S. 352, that, "That the authority of Congress extends to every part of Interstate Commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere." To the same effect is the following language used by the court in Houston E. & W. T. Ry. Co. vs. U. S., 234 U. S. 342, 351: "Wherever the interstate and intrastate transactions of carriers are so related that the government of one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority, and the State, and not the Nation, would be supreme within the national field." Illustrative of the principle announced in the quotations we have just made are the cases, holding that the congressional regulation of safety appliances on all railroad cars of interstate car-

riers, regardless of their use in intrastate or interstate commerce, is valid. (See Southern Railway vs. Railroad Commission of Indiana, 236 U. S. 439); holding that the protection of the Safety Appliance Act extends to all employees of interstate carriers although at the time of injury, they were engaged in purely intrastate commerce (T. & P. Railway vs. Rigsby, 241 U. S. 33); and holding that an employee after having served the appointed time in interstate commerce could not then be required to engage in intrastate commerce, since the effect of so employing him in intrastate commerce would be to render him unfit to discharge duties in interstate commerce.

When interstate and intrastate transactions are interwoven, it is for Congress to determine the question of regulation, as shown by the following extract from the Minn. Rate Case 230 U. S. 432: "If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate requirements with respect to their intrastate rates, which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments, the measure of the regulation it should apply. While the reference is to rates, yet the principle is obviously applicable to other matters in which interstate and intrastate transactions are interwoven. And the power of Congress to prescribe the measures of regulation comes within the providing of appropriate means for a legitimate con-

stitutional end, under the doctrine established in McCulloch vs. Md., 4 Wheaton 316, in order that the constitutional supremacy of Federal legislation may be preserved. The power of congress to enact the Transportation Act, with its various provisions, is sustained by the celebrated case of Gibbons vs. Ogden, 9 Wheaton 1, where the subject of the relation between interstate and intrastate matters was exhaustively considered. In that case, the doctrine was established that through the power of Congress to regulate commerce among the states does not comprehend that commerce which is completely internal, it does comprehend such internal commerce as extends to or affects other states.

In the case of Mondou vs. New York N. H. & H. R. Co., 223 U. S. p. 1; 56 L. Ed. 327, in which case Mr. Justice Van Devanter, at page 746, 56 L. Ed. 344, stated the power of Congress with reference to railroads, as follows:

> "The clauses in the Constitution (Art. 1, par. 8, clauses 3 and 18) which confer upon Congress the power 'to regulate commerce * * * among the several states', and 'to make all laws which shall be necessary and proper for the purpose have been considered by this court so often and in such varied connections that some propositions bearing upon the extent and nature of this power have come to be so firmly settled as no longer to be open to dispute, among them being these:
>
> "1. The term 'commerce' comprehends more than the mere exchange of goods. It embraces commercial intercourse in all its

> branches, including transportation of passengers and property by common carriers, whether carried on by water or by land. * * *
>
> "3. 'To regulate', in the sense intended is to foster, protect, control and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.
>
> "4. This power over commerce among the states so conferred upon Congress is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted it its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce."

This was one of the employers' liability cases, and after the above quotation and the citation of many authorities, Justice Van Devanter said, quoting from the brief of the Solicitor General:

> "Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or, in the exercise of a fair legislative discretion, can be deemed to bear, upon the reliability or promptness or economy or security or utility of the Interstate Commerce Act." (Previously he had defined commerce as an act.)

In the case of Northern Pacific Railway vs. Washington, 222 U. S. 370, 56 L. Ed. 237, this court had under consideration the provisions of the "Hours of Service Law." The railway Company had permitted some of its train crew to remain on duty more than sixteen hours on a train from one point to another in the State of Washington. The case before the court was brought by the Attorney General of the State of Washington for a violation of the state law. The railway company denied liability under the state law. The trial court entered judgment for penalties of $1000.00 under that law. The question of the effective date of the Act of Congress was involved. In disposing of the main cause, however, Mr. Chief Justice White at page 378, L. Ed. 239, said:

> "But we are of opinion that this view is not compatible with the paramount authority of Congress over interstate commerce. It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a state to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject, or manifests its purpose to call into play its exclusive power. This being the conceded premises upon which alone the state law could have been made applicable. It results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was at once

removed from the sphere of the operation of the authority of the state."

The case of Erie Railroad vs. New York, 233 U. S. 671, 38 L. Ed. 1149, was a case involving the Hours of Service Law. In that case it was contended that the State had simply supplemented the action of the Federal government on the Hours of Service, and the State insisted on the maintenance of its rights. This court speaking through Mr. Justice McKenna, at page 683, L. Ed. 1154, in commenting on the argumeent, of the state, said:

"We realize the strength of these observations, but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.

Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the 'hours of service' law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it."

Trusting that the foregoing brief and argument

will be of assistance in the solution of the questions of law presented by the Bill of Complaint filed in this cause and the motions to dismiss same, we beg to submit that, in our view of the law, each of said motions should be sustaiend.

Respectfully submitted,

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Daniel Upthegrove,

Solicitors for the St. Louis Southwestern Ry. Co. of Texas.

INDEX.

Page.

Statement 1

Argument:

1. Jurisdiction—

This action is in substance an action against the United States: but it is not brought in the only manner nor in the only courts in which such action could be brought. 8

The State may not challenge the constitutionality of any statutory provisions other than those which it alleges are being enforced or are about to be enforced 10

The State may not complain of any injury to it which is not alleged to be a direct result of an act of one of the defendants 14

The State is not seeking to protect the financial interests of the State itself 15

While, in the case of a real controversy with a defendant who may be sued, a State may put in issue its rights as a quasi sovereign and the rights which its citizens possess because of their citizenship in the State, it has no right to represent its citizens in other matters. For example, it has no right to raise such a question as whether the Interstate Commerce Commission is exceeding or misusing any powers constitutionally bestowed upon it to the injury of shippers or passengers within the State of Texas 17

2. Defects of bill—

No facts are averred so specifically that the court may consider them 18

3. On the merits—

Other briefs 20

Contentions which do not call for discussion 21

Essential questions on the merits 22

Where a railroad company is conducting both interstate and intrastate transportation, Congress has power to regulate important financial commitments of that company; and its legislation supersedes any conflicting State legislation upon the subject 24

Congress has power to authorize combinations among, and consolidations of, companies which are engaged in interstate transportation, even though they are also engaged in intrastate transportation and their combination or consolidation would violate a State constitution, State statutes or the common law 30

Argument—Continued.
3. On the merits—Continued. Page.
Congress has power to regulate the interstate commerce of the country. In doing so, it may divide the transportation systems of the country into territorial groups which are not bounded by State lines. It may direct railroads within a State to charge for interstate transportation rates which accord with those charged by railroads in other States, and to charge for intrastate transportation rates which accord with those charged for interstate transportation..... 32
The questions which are submitted by the Transportation Act to decision by the Interstate Commerce Commission are administrative and not judicial questions. Therefore those clauses of the Constitution which deal with the exercise of judicial power in cases to which a State is a party do not apply: they do not require the decision of administrative questions by the courts..... 35
For the purposes of this case the Railroad Labor Board is to be considered as a board created for the purpose of investigating disputes between carriers and their employees and making recommendations as to wages and working conditions. So considered, there can be no legal objection to the making of awards by that board.. 38
Even if the awards of the board are of binding force, Congress has power to establish such a board and such principles for the adjustment of labor disputes as are set forth in the act..... 39
Congress has sufficiently set forth the principles to be observed in the adjustment of labor disputes..... 42
Congress may properly provide that some members of the Railroad Labor Board shall be appointed from lists of names submitted by the carriers, some from lists submitted by the employees and some from the general public..... 44
The Transportation Act does not deny to the commissions, to the public or to individual citizens any right to complain to or to appear before the Railroad Labor Board. If the board improperly denies the rights of any party, that fact does not render the act itself unconstitutional. But it is submitted that the board may properly confine its hearings to the carriers and their employees..... 45
4. Conclusion..... 46

AUTHORITIES CITED.

Cases:

	Page.
Adams Express Co. v. *Croninger*, 226 U. S. 491	27
Atlantic C. L. R. Co. v. *North Carolina Corp. Comn.*, 206 U. S. 1	38
Atlantic C. L. R. Co. v. *Riverside Mills*, 219 U. S. 104	32
Atkin v. *Kansas*, 191 U. S. 207	35
Baltimore & O. R. Co. v. *Interstate Com. Comn.*, 221 U. S. 612	25
Barrett v. *Indiana*, 229 U. S. 26	32
Belknap v. *Schild*, 161 U. S. 10	9
Blue v. *Smith*, 69 W. Va. 761	42
Carr v. *United States*, 98 U. S. 433	9
Chicago, B. & Q. R. Co. v. *McGuire*, 219 U. S. 549	35
Chicago, I. & L. Ry. Co. v. *United States*, 219 U. S. 486	27
Collins v. *Texas*, 223 U. S. 288	11
Cook v. *Burnquist*, 242 Fed. 321	42
Crane v. *Johnson*, 242 U. S. 339	11
Cronin v. *Adams*, 192 U. S. 108	11
Daniel Ball, The, 10 Wall. 557	25
De Groot v. *United States*, 5 Wall. 419	9
Denver v. *N. Y. Trust Co.*, 229 U. S. 123	9
Ex parte 74, 58 I. C. C. 220	33
Express Cases, 117 U. S. 1	31
Finn v. *United States*, 123 U. S. 227	8
First Natl. Bank v. *Union Trust Co.*, 244 U. S. 416	42
Georgia v. *Stanton*, 6 Wall. 50	16
Georgia v. *Tennessee Copper Co.*, 206 U. S. 230	16
Green v. *Frazier*, 253 U. S. 233	35
Grenada Lumber Co. v. *Mississippi*, 217 U. S. 433	11, 32
Gulf, C. & S. F. Ry. Co. v. *Hefley*, 158 U. S. 98	27
Hagood v. *Southern*, 117 U. S. 52	15
Hall v. *Geiger-Jones Co.*, 242 U. S. 539	15
Hampton v. *St. Louis, I. M. & S. Ry. Co.*, 227 U. S. 456	11
Hanover National Bank v. *Moyses*, 186 U. S. 181	28
Hill v. *United States*, 9 How. 386	9
Home Telephone Co. v. *Los Angeles*, 211 U. S. 265	37
Honolulu R. T. & L. Co. v. *Hawaii*, 211 U. S. 282	38
Houston, E. & W. T. Ry. Co. v. *United States*, 234 U. S. 342	26
Illinois C. R. Co. v. *State Public Utilities Comn.*, 245 U. S. 493	8
In re Ayers, 123 U. S. 443	15
Intermountain Rate Cases, 234 U. S. 476	42
Interstate Com. Comn. v. *Alabama Midland Ry. Co.*, 168 U. S. 144	37
Interstate Com. Comn. v. *Cincinnati, N. O. & T. P. Ry. Co.*, 167 U. S. 479	37
Interstate Com. Comn. v. *Goodrich T. Co.*, 224 U. S. 194	42
Jeffrey Mfg. Co. v. *Blagg*, 235 U. S. 571	11
Kansas v. *United States*, 204 U. S. 331	10
Knoxville v. *Knoxville W. Co.*, 212 U. S. 1	37
Lee v. *Marsh*, 230 Pa. 351	42
Lehon v. *Atlanta*, 242 U. S. 53	11
Louisiana v. *McAdoo*, 234 U. S. 627	10

Cases—Continued.

	Page.
Louisville & N. R. Co. v. Garrett, 231 U. S. 298	37
Louisville & N. R. Co. v. Mottley, 219 U. S. 467	35
Marye v. Parsons, 114 U. S. 325	11, 13, 15
McCabe v. Atchison, T. & S. F. Ry. Co., 235 U. S. 151	11
McChord v. Louisville & N. R. Co., 183 U. S. 483	37
McCray v. United States, 195 U. S. 27	35
McCulloch v. Maryland, 4 Wheat. 316	25
Minnesota v. Northern Securities Co., 194 U. S. 48	15
Minnesota Rate Cases, 230 U. S. 352	25, 27
Missouri v. Holland, 252 U. S. 416	17
Missouri, K. & T. Ry. Co. v. Haber, 169 U. S. 613	27
Missouri, K. & T. Ry. Co. v. Harriman, 227 U. S. 657	27
Monaco v. N. Y., N. H. & H. R. Co., 223 U. S. 1	26, 32
Munn v. Illinois, 94 U. S. 113	32
Muskrat v. United States, 219 U. S. 346	11
Newark N. G. & F. Co. v. Newark, 212 U. S. 405	15
Noble State Bank v. Haskell, 219 U. S. 104	32
Noble State Bank v. Haskell, 219 U. S. 575	34
Northern Securities Co. v. United States, 193 U. S. 197	28
Oklahoma v. Atchison, T. & S. F. Ry. Co., 220 U. S. 277	18, 34
Oklahoma v. Gulf, C. & S. F. Ry. Co., 220 U. S. 290	18
Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603	28
Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531	11, 42
Prentis v. Atlantic C. L. Co., 211 U. S. 210	37
Reeside v. Walker, 11 How. 272	9
Ross v. Oregon, 227 U. S. 150	37
St. Louis, I. M. & S. Ry. Co. v. Hesterly, 228 U. S. 702	27
St. Louis, I. M. & S. Ry. Co. v. Taylor, 210 U. S. 281	32
San Diego L. & T. Co. v. Jasper, 189 U. S. 439	37
Schillinger v. United States, 155 U. S. 163	8
Second Employers' Liability Cases, 223 U. S. 1	26, 32
Shreveport Case, 234 U. S. 342	26
Slaughter House Cases, 16 Wall. 36	32
Smith v. Alabama, 124 U. S. 465	25
Southern Ry. Co. v. Railroad Comm. of Indiana, 236 U. S. 439	27
Southern Ry. Co. v. Reid, 222 U. S. 424	27
Southern Ry. Co. v. United States, 222 U. S. 20	26
State v. McCarty, 5 Ala. Ap. 212	42
State of Texas v. United States, No. 563, Oct. Term, 1921	20, 30
Stearns v. Woods, 236 U. S. 75	12
Texas & P. Ry. Co. v. Rigsby, 241 U. S. 33	27
Texas & P. Ry. Co. v. Abilene C. O. Co., 204 U. S. 426	32
The Daniel Ball, 10 Wall. 557	25
United States v. McLemore, 4 How. 286	9
West v. Louisiana, 194 U. S. 258	32
Western U. T. Co. v. Commercial M. Co., 218 U. S. 406	32
Wilmington S. M. Co. v. Fulton, 205 U. S. 60	32
Wilson v. New, 243 U. S. 332	35, 41

Statutes: Page.
38 Stat. 219, c. 32 8
38 Stat. 717, c. 311 31
Jud. Code, secs. 208, 211 8
Federal Trade Commission Act 31
Miscellaneous:
Canadian Industrial Disputes Investigation Act 45
Higgins, A New Province for Law and Order, 32 Harv. L. Rev. 189 41
Monthly Labor Review 45
Noyes, American Railroad Rates, 212 note, 250 37
Shakespeare, Merchant of Venice, act 1, scene 1 19
Smalley, Railroad Rate Control, 48 37

In the Supreme Court of the United States.

STATE OF TEXAS *v.* INTERSTATE COMMERCE COMMISSION AND Railroad Labor Board.	Original, No. 24.

BRIEF FOR THE DEFENDANTS ON MOTION TO DISMISS.

STATEMENT OF THE CASE.

The State of Texas, by its attorney general, filed an original bill in equity in this court against the Interstate Commerce Commission and the Railroad Labor Board for the purpose of enjoining them from enforcing provisions of the Transportation Act of 1920, which were set forth in the bill.

The State alleges that the Transportation Act is unconstitutional in many respects, although fails to show any concrete controversy and therefore any justiciable case.

The 21 paragraphs and numerous sub-paragraphs are summed up in the brief which the Interstate Commerce Commission has filed in this case. That brief, however, naturally omits the references to the Railroad Labor Board, to which the present brief is so largely devoted.

The State alleges that many provisions of the Transportation Act dealing with the adjustment of railroad labor disputes and the organization of boards for that purpose are unconstitutional. Thus it alleges that:

(*a*) By the Tenth Amendment the people or the States reserved the right to fix wages and working conditions by contract, and the Transportation Act interferes with this right.

(*b*) The States or the people have reserved the right to prohibit combinations and conspiracies in restraint of trade; the State of Texas has exercised this right; the Transportation Act authorizes carriers and their employees to combine in restraint of trade; and the act is, therefore, void.

(*c*) The act violates the Constitution in granting special privileges. The State apparently objects to the direction that some of the members of the Railroad Labor Board be selected from lists prepared by designated groups of men.

(*d*) By the act violations of the decisions of the Adjustment Boards are made violations of law. It also declares that the State and its people are entitled to be charged in transportation rates for a wage scale and reasonable working conditions produced by competition, and that in violation of this right the "act authorizes the carriers and employees by means of said Adjustment Board erected by themselves to enter into conspiracies in restraint of trade which may materially add to the cost of transportation, and to pass the cost on to the producer and con-

sumer, who are not given the right to be heard by said act."

(*e*) The provision of the Constitution empowering Congress to establish tribunals inferior to the Supreme Court is violated by the sections of the act which provide for the establishment of Boards of Labor Adjustment.

(*f*) Members of the Adjustment Boards are not required by the act to take the oath of office which is required of public officers by the Constitution.

(*g*) Members of the Adjustment Boards are not required to be appointed by the President nor by any head of any department of the Government.

(*h*) The act violates the Fourth and Eighth Amendments inasmuch as it authorizes the Labor Board to give to its determination that any decision of the Labor Board or of an Adjustment Board has been violated such publicity as it may deem to be advisable, thus, the State contends, fixing a penalty which is in its nature cruel and unusual. The State also alleges that through fear of the effect of such publicity the railroads have been compelled to submit to unreasonable contracts and awards.

(*i*) Citizens are denied privileges and immunities and are attainted in that not all citizens are eligible to all boards; and the President is deprived of a constitutional right in being restricted in his right of appointment. The bill also alleges that the act is unconstitutional in that it does not require the taking of the oath of office by those groups of persons (incorrectly called in this paragraph of the bill the

"Labor Group" and the "Management Group"), who prepare the lists of names from which the President, by and with the advice and consent of the Senate, selects six of the nine members of the Labor Board.

(*j*) The sections of the act which designate groups from which members of the Labor Board may be chosen violate the Constitution in that they deprive the President of his plenary power, without the consent of anyone, to fill vacancies which may happen during the recess of the Senate.

(*k*) In view of the due process clause of the Fifth Amendment, the act is rendered void by the alleged fact that no power is given to the commissions, to the public, or to individual citizens to complain to, or to appear before, the Railroad Labor Board.

(*l*) Congress has attempted to delegate legislative power in violation of the Constitution, in that it has attempted to confer upon the Railroad Labor Board and the Adjustment Boards the power to establish wages and working conditions without laying down adequate rules for the guidance of those boards. The bill also declares that the act violates the due process clause of the Fifth Amendment in that it does not require the boards in considering wages and working conditions to take into account factors which the State alleges should be given weight.

(*m*) In authorizing the Railroad Labor Board to have its offices in Chicago the act violates the provision of the Constitution which authorizes Congress to exercise exclusive legislation in the District of

Columbia. The State apparently contends that the Federal Government can function only in the District of Columbia.

(*n*) The act authorizes unreasonable searches and seizures in violation of the Constitution.

(*o*) It repeats attacks upon the act which were made in previous paragraphs, and contends that, in authorizing the Railroad Labor Board to pass upon the question whether an order of that Board or of an Adjustment Board has been violated, the act authorizes an administrative body to pass upon a judicial question, and violates the provisions of the Constitution which prescribe trials by jury.

It will be observed that, although the State repeatedly alleges that provisions of the act which relate to "Railroad Boards of Labor Adjustment" are unconstitutional, no such Adjustment Board is made a party to this suit.

Instead of considering all of the many contentions of the State, this court may very properly limit its attention to those matters in which the bill alleges that the Interstate Commerce Commission or the Railroad Labor Board has acted or is about to act. Those matters may be stated briefly.

The State alleges that the Railroad Labor Board in fixing wages and salaries and in establishing working conditions has caused an enormous and unreasonable increase in the amount of railroad operating expense within the State of Texas, resulting in the necessity for an increased operating income, and that by reason thereof the Interstate Commerce Commis-

sion has fixed fares and charges for the transportation of passengers and freight which are unjust and unreasonable, to the loss of producers and shippers of the State.

It alleges that the Interstate Commerce Commission has authorized railroads within the State to cease operating trains and to dismantle their railroads, contrary to the constitution and laws of the State and in disregard of contract obligations, although, since the railroads are not parties to this proceeding, the State does not ask the court to pass upon those contract obligations; that the Interstate Commerce Commission has refused to permit the construction of railways within the State by persons and corporations who have complied with all the requirements of the State; and that the commission is regulating the issuance of securities by the railroads of the State.

It alleges that the commission has issued an order placing the State in what is designated as the Western Freight Group; that it "has and will continue to require the railroad companies of the State" to make charges contrary to the statutes and constitution of the State, and that "the railroads of Texas are now and will be called upon to pay more than their just share upon property within the State to supply the operating income demanded by the railroads of the United States."

Furthermore, it alleges that the commission has and will, whenever it deems it necessary and desirable, authorize the creation of combinations among rail-

roads within the State without regard for the constitution and laws of Texas relative thereto; and it claims that "the State of Texas in its sovereign capacity is being sued and has been and will be sued and made a party to suits involving the rights, powers, privileges, sovereignty, and property of the State before the Interstate Commerce Commission of the United States contrary to the Constitution."

On October 4 the Solicitor General, on behalf of the Railroad Labor Board, moved to dismiss the bill upon the grounds of the absence of jurisdiction and the lack of equity in the bill. The counsel for the Interstate Commerce Commission also moved to dismiss in behalf of that commission.

As the case is before the court on motions to dismiss, which are tantamount to demurrers, the case is presented to the court solely on the questions of law involved, unincumbered by any questions of fact.

ARGUMENT.

I. JURISDICTION.

This action is in substance an action against the United States; but it is not brought in the only manner nor in the only courts in which such action could be brought.

Under Judicial Code, sections 208, 211, and 38 Stat. 219, 220, any suit to enjoin, suspend, or set aside an order of the Interstate Commerce Commission must be brought against the United States and must be brought in the appropriate district court. These statutory provisions have been applied in the case of a cross bill filed in *Illinois Central Railroad Co.* v. *State Public Utilities Commission of Illinois*, 245 U. S. 493, where the court said (pp. 504, 505):

> By statute such suits are required to be brought against the United States, Jud. Code, secs. 208, 211, c. 32, 38 Stat. 219–220, and the jurisdictional provision before mentioned permits them to be brought only in designated districts. Here the Eastern District of Missouri was the one designated, the order being one that was made upon the petition of a resident of that district. The United States had consented to be sued there, but not elsewhere, and, being suable only by its consent, could not be sued in a district not within the consent given. See *Finn* v. *United States*, 123 U. S. 227, 232–233; *Schillinger* v. *United States*, 155

U. S. 163, 166. It therefore is certain that the cross bills could not be entertained in the Northern District of Illinois, unless in this regard there be, as is asserted, a valid distinction between a cross bill and an original bill. No doubt there are situations in which a cross bill against an ordinary suitor may be considered and dealt with in virtue of the jurisdiction over the principal suit, even though as an original bill it could not be entertained (see *Denver* v. *New York Trust Co.*, 229 U. S. 123, 135, and cases cited); but it is otherwise where the cross bill is against the United States, for no suit against it can be brought without its consent given by law. Its immunity recognizes no distinction between cross bills and original bills, or between ancillary suits and original suits, but extends to suits of every class. *United States* v. *McLemore*, 4 How. 286; *Hill* v. *United States*, 9 How. 386; *Reeside* v. *Walker*, 11 How. 272, 290; *DeGroot* v. *United States*, 5 Wall. 419, 431–433; *Carr* v. *United States*, 98 U. S. 433, 437; *Belknap* v. *Schild*, 161 U. S. 10, 16. * * *

As before indicated, the United States is made by statute a necessary party to a suit to set aside an order of the commission, and this means that it is to stand in judgment as representing the public. If the State authorities thought the order should be set aside and wished to test their right to affirmative relief along that line they should have resorted to the court empowered by law to entertain a suit of that nature.

The present action was not brought against the United States nor was it brought in the appropriate district court.

The United States has never given its consent to any suit against it involving the orders of the Railroad Labor Board, but it cannot be gainsaid that this case in its essence is a challenge to the power of the United States to enact this legislation for the regulation of interstate rates.

In bringing this suit the State of Texas is in no stronger position than an individual plaintiff would be. The United States can not be sued by a State without its consent. "Public policy forbids that conclusion:" *Kansas* v. *United States*, 204 U. S. 331, 342. *See* also *Louisiana* v. *McAdoo*, 234 U. S. 627.

The State may not challenge the constitutionality of any statutory provisions other than those which it alleges are being enforced or are about to be enforced.

The bill contains many criticisms of provisions of the Transportation Act which have not, so far as the record shows, been put into force. For example, the State contends that the section of the act which authorizes collective bargaining between railroad employees and railroad companies and the section which authorizes searches and seizures are both unconstitutional, although it does not allege that there has been any collective bargaining or any search or seizure accomplished or attempted under color of the act. But it is, in general, unnecessary

to discuss such criticisms of the act. This court refuses to pass upon a constitutional question unless its solution is necessary for the decision of an actual case then before the court (*Hampton* v. *St. Louis, I. M. & S. Ry. Co.*, 227 U. S. 456, 468, 469; *Collins* v. *Texas*, 223 U. S. 288, 295, 296; *Marye* v. *Parsons*, 114 U. S. 325, 330; *Cronin* v. *Adams*, 192 U. S. 108, 114; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544, 545; *McCabe* v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 163, 164; *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Lehon* v. *Atlanta*, 242 U. S. 53, 55, 56); and in determining the constitutionality of a statute the court considers only so much of the statute as applies in that particular case. (*Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 442; *Crane* v. *Johnson*, 242 U. S. 339, 343.)

As this court said in *Muskrat* v. *United States*, 219 U. S. 346, 361, 362, in dismissing petitions for want of jurisdiction:

> That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. The right to declare a law unconstitutional arises because an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require

> the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the Government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a "case" or "controversy" to which, under the Constitution of the United States, the judicial power alone extends. * * *
>
> If such actions as are here attempted, to determine the validity of legislation, are sustained, the result will be that this court, instead of keeping within the limits of judicial power and deciding cases or controversies arising between opposing parties, as the Constitution intended it should, will be required to give opinions in the nature of advice concerning legislative action, a function never conferred upon it by the Constitution, and against the exercise of which this court has steadily set its face from the beginning.

In *Stearns* v. *Woods*, 236 U. S. 75, where the lower court had dismissed a bill on the ground that no cause of action was stated therein, this court dismissed the appeal, saying:

> The general orders referred to in the bill do not directly violate or threaten interference with the personal rights of appellant—a major in the National Guard whose present rank remains undisturbed. He is not therefore in position to question their validity; and certainly he may not demand that we construe orders, acts of Congress, and the Constitution

> for the information of himself and others, notwithstanding their laudable feeling of deep interest in the general subject. The province of courts is to decide real controversies, not to discuss abstract propositions.

And in *Marye* v. *Parsons*, 114 U. S. 325, 330, the court declared:

> No court sits to determine questions of law *in thesi*. There must be a litigation upon actual transactions between real parties, growing out of a controversy affecting legal or equitable rights as to person or property. All questions of law arising in such cases are judicially determinable. The present is not a case of that description.

In the present case, the State can not properly challenge the decisions of the Railroad Labor Board. It is true that the State claims that the board has made decisions upon which the railroad companies have incurred greatly increased operating expenses, and that by reason thereof the Interstate Commerce Commission has increased transportation charges. But the State does not make allegations which show that the railroad companies changed wages or working conditions under any compulsion, except possibly the fear of the results of public opinion, which might be enlightened as provided in the act. Certainly unless the railroads were bound by law to comply with the decisions of the board, and did so for that reason, no one can complain that there has been any unauthorized grant of power by Congress to the Railroad Labor Board.

It is not necessary in this case to discuss the extent of the powers of that board. The board was created in order that disputes between railroad companies and their employees might be settled in some other way than by economic struggle or by insistence upon theretofore legal rights in the courts. It was made a mixed tribunal, with members selected from the employers, from the employees, and from the general public. Its decisions undoubtedly have such weight as is given to them by the ability of their members and the representative character of those members; and the board may adequately inform the public as to whether its decisions have been observed. But whether Congress intended that such should be the limit of the powers of the board or intended to give it further powers is a question which is not now before the court, for the railroad companies complied with the decisions of the board without raising the question whether those decisions were legally binding upon the railroads.

The State may not complain of any injury to it which is not alleged to be a direct result of an act of one of the defendants.

The decisions of the Railroad Labor Board did not directly affect the State or any purchaser of transportation therein, and for that reason the State is not in a position to challenge the board's decisions. The board decided in favor of changes in wages and working conditions, upon which the railroad companies incurred increased expenditures, whereupon the Interstate Commerce Commission authorized

the railroad companies to raise their charges for transportation. But the State may not thereupon bring action against the Railroad Labor Board. In *Marye* v. *Parsons*, 114 U. S. 325, which has been followed in later cases (*Hagood* v. *Southern*, 117 U. S. 52; *In re Ayers*, 123 U. S. 443, 496; see also *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 70; *Newark N. G. & F. Co.* v. *Newark*, 242 U. S. 405; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539) a holder of coupons which by contract were receivable in payment of taxes sought an injunction to compel their receipt in payment of taxes, but as he was not himself a taxpayer the court declined to grant him relief. In that case the persons directly affected brought no action, and the court refused to consider the claims of one who was injured only indirectly. In the present case neither a railroad nor the Interstate Commerce Commission is protesting against the decisions of the Railroad Labor Board, nor is any shipper or passenger except in so far as the State may be to some extent a purchaser of transportation; and the securing of relief to the State as a purchaser of transportation is not the substantial purpose of this proceeding.

The State is not seeking to protect the financial interests of the State itself.

The State has not such a financial interest in the outcome of the present suit as to entitle it to maintain the action upon that ground. It is true that in Paragraph III the State incidentally alleges that it is a purchaser of transportation; but the bill as a

whole, and notably its prayers for relief, clearly shows that the State is not in reality seeking relief upon that ground.

In this respect the case is like that of *Georgia* v. *Stanton*, 6 Wall. 50, where the State asked the court to enjoin the enforcement of the Reconstruction Acts, alleging that their enforcement would deprive the State of its property. The court refused to grant the injunction, saying:

> It is apparent that this reference to property and statement concerning it are only by way of showing one of the grievances resulting from the threatened destruction of the State, and in aggravation of it, not as a specific ground of relief. This matter of property is neither stated as an independent ground, nor is it noticed at all in the prayers for relief. Indeed, the case as made in the bill would have stopped far short of the relief sought by the State, and its main purpose and design given up, by restraining its remedial effect simply to the protection of the title and possession of its property. Such relief would have called for a very different bill from the one before us.

So, also, in the present case the real purpose of the bill is far different from merely securing a reduction of the rates for transportation charged to the State Government.

Again, in *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, where the State sought an injunction to restrain the company from discharging noxious

gases from its works over the border of the State upon the territory of the plaintiff State, the court said:

> The alleged damage to the State as a private owner is merely a make-weight * * *. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small.

The court granted the injunction, but it did so upon the ground that the suit was by the State for an injury to it in its capacity of quasi sovereign. (See also *Missouri* v. *Holland*, 252 U. S. 416, 431.)

In the present case the suit should be maintained, if at all, as one brought by the State as quasi sovereign.

While, in the case of a real controversy with a defendant who may be sued, a State may put in issue its rights as a quasi sovereign and the rights which its citizens possess because of their citizenship in the State, it has no right to represent its citizens in other matters. For example, it has no right to raise such a question as whether the Interstate Commerce Commission is exceeding or misusing any powers constitutionally bestowed upon it to the injury of shippers or passengers within the State of Texas.

A Federal court can not consider every suit which a State may see fit to institute. A State can not represent its citizens in all matters. It could not in the interest of even a large number of its citizens go into a Federal court and ask the court to enforce Federal laws for the protection of its citizens. For

example, it could not ask a Federal court to enforce the Federal antitrust laws against specified defendants on the ground that those defendants, by violating Federal laws, were injuring a large number of the citizens of the State. A State may appeal to the Federal courts only in cases in which the property rights of the State or its quasi-sovereign rights or the rights of its citizens as citizens of the State are involved, and not in cases in which it is seeking to represent the individual rights of any number of its citizens. (*Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 220 U. S. 277. See also *Oklahoma* v. *Gulf, C. & S. F. Ry. Co.*, 220 U. S. 290, 301.)

In the present case, in so far as the State is contending that the Federal rates are unreasonable in themselves, it is asking the court to pass upon a question which the State is not entitled to raise. Even the placing of the railroads of the State in the Western Freight Group, of which the State complains, is simply a matter affecting the railroads and the shippers. It is not a matter in which the State may appear in its own behalf or in behalf of its citizens at large.

2. Defects of Bill.

No facts are averred so specifically that the court may consider them.

The allegations of the bill are not made with such certainty and precision as to present a justiciable controversy to the court, with possibly an exception as to the allegation concerning the placing of the railroads of the State in the Western Freight Group,

and in that matter, for reasons already explained, the State is not entitled to contest the action of the Interstate Commerce Commission.

The State, for example, alleges in Paragraph XXI that the Interstate Commerce Commission has authorized railroads within the State to cease operating trains and to dismantle their railroads contrary to the laws of the State; but it does not allege when or as to what railroad or portion thereof the Interstate Commerce Commission has granted any such authority. And it alleges that "said Interstate Commerce Commission intends and will, whenever it deems it necessary and desirable, authorize the creation and operation of trusts, combinations, and monopolies among railroads in Texas;" but the State does not name any specific railroad companies whose combination the Interstate Commerce Commission proposes to authorize. Such allegations are typical of the bill.

In this voluminous bill there may be isolated allegations which, standing by themselves, would present a justiciable controversy. We do not concede this, for the bill, as a statement of a concrete controversy, is "an infinite deal of nothing," since the plaintiff has so lost its two grains of wheat in two bushels of chaff [1] that this court is justified in dismissing this bill without prejudice to the State of Texas to file a proper bill which would raise in a concrete case a justiciable controversy.

[1] "His reasons are as two grains of wheat hid in two bushels of chaff; you shall seek all day ere you find them; and when you have them they are not worth the search." (Shakespeare, Merchant of Venice, act 1, scene 1.)

3. On the Merits.

other briefs.

Before discussing the bill on the merits attention must be called to the brief filed in the instant case by the counsel for the Interstate Commerce Commission. The United States rests upon the arguments there made and does not consider it necessary to repeat them in the present brief.

Attention must also be called to the brief for the United States in the recent case of *State of Texas* v. *United States*, No. 563 of this term. It will be recalled that that case involved the constitutionality of a provision of the Transportation Act of 1920, under which the Interstate Commerce Commission authorized the Eastern Texas Railroad Company to abandon all operations, both interstate and intrastate, on a designated line of track. The United States there pointed out, with an argument and a discussion which we shall not here repeat, that where the interstate and the intrastate operations of a carrier are inextricably intermingled, so that effective regulation of the one involves also the regulation of the other, Congress may regulate both classes of operations under the power bestowed by the commerce clause of the Constitution; and that where the railroads of the country were taken over by the Federal Government by virtue of the war power, that power also authorizes Congress to provide for the effective rehabilitation of the railroad systems of the country and for such control over particular

parts of that system as will enable Congress to carry out effectively its general plan.

CONTENTIONS WHICH DO NOT CALL FOR DISCUSSION.

It is not necessary to discuss the many criticisms which the State levels at the provisions of the act which deal with the Railroad Boards of Labor Adjustment, for those boards, as distinguished from the Railroad Labor Board, are not made parties to this suit, nor are any acts of such Adjustment Boards properly in issue in this suit.

It is not necessary to discuss contentions that provisions of the act are unconstitutional where it is not alleged that anything has been done or attempted under such provisions (p. 10, *supra*); or even where it is not alleged that there has been an injury to the plaintiff as a direct result of an act of one of the defendants. (P. 14, *supra*.)

It is not necessary to discuss criticisms of the act in which the State does not show that it has either a financial or a governmental interest in the result of the suit. (Pp. 14, 17, *supra*.)

Nor is it necessary to discuss a number of the contentions of the State which are clearly trivial. For example, the State claims that the act is unconstitutional in not requiring the taking of the oath of office by the members of those groups of men who prepare lists from which some of the members of the Railroad Labor Board are selected. The act is silent upon the subject. Even if the members of those groups be considered public officers, it cer-

tainly can not be necessary that Congress should enact concerning them a requirement which is sufficiently set forth in the Constitution. So also the State contends that the act violates the Constitution when it authorizes the Railroad Labor Board to have its offices elsewhere than in the District of Columbia. Such contentions do not require further discussion.

ESSENTIAL QUESTIONS ON THE MERITS.

But several important questions are raised by the bill and will call for serious consideration if it shall be held that the case meets the objections which have been raised as to the jurisdiction of the court and as to the failure of the bill to allege specific facts.

(*a*) When a railroad company is engaged in both interstate and intrastate transportation, may the Federal Government exercise exclusive authority to permit or forbid the extension or abandonment of any portion of the railroad and exclusive authority to permit or forbid the issuance of new securities: in other words, when such a railroad wishes to increase or decrease its financial obligations, may the Federal Government authorize or prohibit such action regardless of the wishes of the State in which the company operates?

(*b*) When railroad companies are engaged in both interstate and intrastate transportation, may the Federal Government authorize combinations of those companies regardless of the wishes of any State?

(*c*) May the Federal Government require that intrastate rates be made to accord with interstate

rates when the interstate rates are not based simply on conditions of interstate transportation within that State but are made to accord with charges in other States based on the conditions of transportation in those other States?

(*d*) When the Federal Government authorizes a State to take part in proceedings before the Interstate Commerce Commission concerning the extension or abandonment of any railroad or the operation thereof, or the issuance of new securities, or the regulation of some charges or practices which are subject to the commission, are the rights of the State being subjected to decision by the commission contrary to the clauses of the Constitution which relate to the decision of cases to which a State is a party?

(*e*) May Congress create a board for the purpose of investigating disputes between interstate carriers and their employees and making recommendations as to wages and working conditions?

(*f*) May Congress establish the principles for the adjustment of labor disputes which are set forth in the act, and has it so far established principles to be observed in the settlement of such disputes as to meet the objection that it has attempted to delegate legislative power to the Railroad Labor Board?

(*g*) May Congress provide that some members of the board shall be appointed from lists of names submitted by the carriers, some from lists submitted by the employees, and some from the general public?

(*h*) Is the act unconstitutional because it does not expressly provide that the commissions, the public,

or individual citizens may complain to or appear before the Railroad Labor Board?

Where a railroad company is conducting both interstate and intrastate transportation, Congress has power to regulate important financial commitments of that company; and its legislation supersedes any conflicting State legislation upon the subject.

Railroad transportation is not conducted by lines which are exclusively interstate and by lines which are exclusively intrastate. The same company conducts both kinds of transportation at the same time, on the same tracks, and often in the same cars, so that in some respects at least the interstate and intrastate activities of the company are inextricably intermingled. This is certainly true when a railroad extends or abandons a portion of its line or issues additional securities. Either of these acts increases or decreases the financial commitments of the company as a whole and affects materially the ability of the company to render efficient service to either interstate or intrastate shippers and passengers. If the company is in a precarious financial condition, as so many railroad companies are at the present time, it is especially important that its financial commitments be regulated in an economic manner, that the company be required to render all services which are really essential for public convenience and necessity, and that it be relieved from rendering services for which there is not sufficient occasion and which can not be performed without a financial loss which weakens the whole transportation system of the company.

If the same act necessarily and simultaneously affects both interstate and intrastate transportation there can be no doubt that Congress has power to regulate that act and that any legislation which Congress has power to enact supersedes any conflicting State legislation upon the subject. As Mr. Justice Hughes pointed out in delivering the opinion of the court in the *Minnesota Rate Cases*, 230 U. S. 352, 399:—

> There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere. *McCulloch* v. *Maryland*, 4 Wheat. 316, 405, 426; *The Daniel Ball*, 10 Wall. 557, 565; *Smith* v. *Alabama*, 124 U. S. 465, 473; *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*,

221 U. S. 612, 618, 619; *Southern Railway Co.* v. *United States*, 222 U. S. 20, 26, 27; *Second Employers Liability Cases* (*Mondou* v. *N. Y., N. H. & H. R. Co.*), 223 U. S. 1, 47, 54, 55.

In the *Shreveport Case* (*Houston, E. & W. T. Ry. Co.* v. *United States*, 234 U. S. 342) Mr. Justice Hughes, speaking for the court, again said (pp. 351, 353):

> The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. * * * Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a State, as such, but that it does possess the power to

> foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled.

The mere fact that States have heretofore regulated such matters as extensions and abandonments of service and the issuance of securities does not show that Congress may not regulate them to the exclusion of State control. Many State regulations affecting interstate commerce have been sustained in the absence of conflicting Federal legislation but have been held to be no longer operative after Congress had exercised its paramount power over interstate commerce. (*Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Adams Express Co.* v. *Croninger*, 226 U. S. 491; *Missouri, K. & T. Ry. Co.* v. *Harriman*, 227 U. S. 657, 672; *St. Louis, I. M. & S. Ry. Co.* v. *Hesterly*, 228 U. S. 702, 704; *Southern Ry. Co.* v. *Railroad Comn.*, 236 U. S. 439, 448; *Gulf, C. & S. F. Ry. Co.* v. *Hefley*, 158 U. S. 98, 103–105; *Missouri, K. & T. Ry. Co.* v. *Haber*, 169 U. S. 613, 626. See also *Texas & P. Ry. Co.* v. *Rigsby*, 241 U. S. 33, 41, and discussion in *Minnesota Rate Cases*, 230 U. S. 352, 402–412.)

> No State enactment can be of any avail when the subject of such transactions has been covered by an act of Congress acting within the limits of its constitutional powers *Chicago, I. & L. Ry. Co.* v. *United States*, 219 U. S. 486, 497.

The fact that under State charters there were contractual relations between the railroads and the State is not material. There is nothing in the Constitution which forbids Congress to impair the obligation of contracts (*Hanover National Bank* v. *Moyses*, 186 U. S. 181, 188), and, indeed, Federal regulations of interstate commerce which have impaired the obligation of theretofore valid contracts have been sustained repeatedly by this court. (See *Philadelphia, B. & W. R. Co.* v. *Schubert*, 224 U. S. 603, 613–615, and cases there cited.) Moreover, it seems clear that if under the Constitution the power of Congress over a subject matter is supreme, Congress can not be deprived of that power by any contract between a railroad company and the State.

Nor does the fact that some of the railroads were incorporated under State authority have any greater significance. As Mr. Justice Harlan said, in announcing the decision in *Northern Securities Co.* v. *United States*, 193 U. S. 197, at 345, 349–350, Congress does not have to stay its hands because some of the corporations concerned are State corporations.

> We can not conceive how it is possible for any one to seriously contend for such a proposition. It means nothing less than that Congress, in regulating interstate commerce, must act in subordination to the will of the States when exerting their power to create corporations. No such view can be entertained for a moment. * * * The regulation or control of purely domestic commerce of a State is, of course, with the State, and

Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the General Government or any legal enactment of Congress. * * * But neither a State corporation nor its stockholders can * * * interfere with the complete enforcement of any rule lawfully devised by Congress for the conduct of commerce among the States or with foreign nations; for, as we have seen, interstate and international commerce is by the Constitution under the control of Congress, and it belongs to the legislative department of the Government to prescribe rules for the conduct of that commerce. If it were otherwise, the declaration in the Constitution of its supremacy, and of the supremacy as well of the laws made in pursuance of its provisions, was a waste of words. Whilst every instrumentality of domestic commerce is subject to State control, every instrumentality of interstate commerce may be reached and controlled by national authority, *so far as to compel it to respect the rules for such commerce lawfully established by Congress.* No corporate person can excuse a departure from or violation of that rule under the plea that that which it has done or omitted to do is permitted or not forbidden by the State under whose authority it came into existence. We repeat that no State can endow any of its corporations, or any combination of its citizens, with authority to restrain interstate or international commerce, or to disobey the national will as manifested in legal enactments of Congress. (Italics in opinion.)

We will not prolong this phase of the argument, for in the brief filed by the Government in the case of *State of Texas* v. *United States*, now pending in this court, we have endeavored to vindicate on broad and comprehensive grounds the right of Congress to enact the Transportation Act.

Congress has power to authorize combinations among, and consolidations of, companies which are engaged in interstate transportation, even though they are also engaged in intrastate transportation and their combination or consolidation would violate a State constitution, State statutes or the common law.

We have already seen that where interstate and intrastate commerce are inextricably commingled Congress may regulate both kinds of commerce. It may regulate the separate companies which are engaged in interstate commerce. It may so regulate their intercorporate relations as to forbid their combination even though it is permitted by State law. It seems to follow, as equally supported by the commerce clause, that Congress may, on the other hand, permit combinations and consolidations among interstate carriers even though such relations are forbidden by State law.

Congress has by other legislation restrained competition among interstate carriers even though competition were permitted by the States. It has required carriers to serve all patrons alike; it has forbidden them to raise or lower their charges without designated ample notice to the public; and it has forbidden companies which reduce charges to meet

water competition to make subsequent increases in those charges due to the termination of that competition, thus restraining competition between railroads and carriers by water. And in the Federal Trade Commission Act (Sept. 26, 1914, c. 311, sec. 5, 38 Stat. 717, 719), it has taken pains to forbid unfair methods of competition. So also many provisions of tariff legislation have been designed to limit competition. Congress has not, in the past, regarded competition as always desirable.

Moreover, this court in the *Express Cases* (117 U. S. 1), established the rule of Federal law that railroad companies are not obliged to furnish equal facilities to all express companies, although as a necessary result of the decision express companies have not been able to compete freely with each other.

Nor have the States always encouraged competition. Many of them have required the issuance of certificates of convenience and necessity by a State commission before a new railroad line could be constructed or an old one extended; and States and municipalities have in many instances forbidden the operation of jitneys or have so regulated jitneys as to make their profitable operation impossible.

And the railroad companies themselves have long monopolized transportation along their own tracks. In the early days of railroad history the companies simply furnished the tracks, while the patrons furnished the cars and the motive power. But such methods of transportation have long been impossible.

For the past 70 years the railroad companies have had a monopoly of the freight and passenger transportation on their tracks.

It is clear, then, that neither Congress nor this court nor the States nor users of railroad facilities have regarded competition as being under all circumstances a necessary or desirable part of the law of the land.

The State, however, claims that in authorizing some combinations among carriers the Transportation Act is in conflict with the common law, and it claims that for that reason the Transportation Act is unconstitutional. But similar contentions for the supremacy of the common law have been made repeatedly in this court, and the court has uniformly sustained the powers of Congress and of the State legislatures to change the common law. (*Munn* v. *Illinois*, 94 U. S. 113, 134; *Texas & P. Ry. Co.* v. *Abilene C. O. Co.*, 204 U. S. 426; *St. Louis, I. M. & S. Ry. Co.* v. *Taylor*, 210 U. S. 281, 294, 295; *Wilmington S. M. Co.* v. *Fulton*, 205 U. S. 60, 74; *West* v. *Louisiana*, 194 U. S. 258, 262; *Barrett* v. *Indiana*, 229 U. S. 26, 30; *Second Employers' Liability Cases*, 223 U. S. 1, 50; *Atlantic C. L. R. Co.* v. *Riverside Mills*, 219 U. S. 186; *Noble State Bank* v. *Haskell*, 219 U. S. 104, 113; *Western U. T. Co.* v. *Commercial M. Co.*, 218 U. S. 406, 417; *Grenada L. Co.* v. *Mississippi*, 217 U. S. 433, 441; *Slaughter House Cases*, 16 Wall. 36, 65, 66.)

Congress has power to regulate the interstate commerce of the country. In doing so, it may divide the transportation systems of the country into territo-

rial groups which are not bounded by State lines. It may direct railroads within a State to charge for interstate transportation rates which accord with those charged by railroads in other States, and to charge for intrastate transportation rates which accord with those charged for interstate transportation.

The State objects to the action of the Interstate Commerce Commission (in *Ex parte 74*, 58 I. C. C. 220) in placing the railroads of Texas in the Western Group. Theretofore the railroads of the country west of Lake Michigan and the Illinois and Mississippi rivers were in Western Classification Territory. The commission divided the railroads in that territory into the Western Group and the Mountain-Pacific Group, placing the railroads of Texas in the Western Group. The railroads which passed through comparatively level territory were separated from those which passed through mountainous territory and were thus given a more appropriate grouping than had been given to them by the companies themselves. Neither the railroads nor their patrons are complaining of this decision.

But the State objects to this grouping of the railroads of Texas with those of other States and to the provision of the Transportation Act (sec. 422) under which the rates in Texas may be made to correspond with those in other States in the Western Group, irrespective of the needs of the particular railroads. The commission has raised interstate rates in Texas and has raised intrastate rates to correspond therewith, although it has not changed the relation between rates charged by Texas railroads and those

charged by other railroads in the Western Group. The State challenges this decision. Obviously the State can not contest the validity of the interstate rates simply on the ground that they violate rights of the railroads or their patrons which arise out of the Federal Constitution or Federal laws. (*Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 220 U. S. 277.) But it may be contended that the State has a right to regulate intrastate rates until they are set aside by a valid Federal law or order and that therefore when the Interstate Commerce Commission orders a change in intrastate rates to correspond with interstate rates the State may challenge the order on the ground that the basic interstate rates are invalid.

It is submitted, therefore, that in regulating interstate commerce Congress has power to consider the interests of the country as a whole. It may do far more than prevent State regulation which is inimical to interstate commerce. It may properly disregard State lines and treat the country as being for this purpose one sovereignty, just as it is for the coinage of money and for international relations. So also Congress may, for the purposes of regulation, divide the transportation systems of the country into groups which are not bounded by State lines. It may classify the objects of its legislation at least as freely as the States may do so. The classification authorized by Congress is not totally lacking in logical justification, and this court, as it has so often said, does not pass upon the wisdom or justice of legislation. (*Noble State Bank* v. *Haskell*, 219 U. S. 575, 580;

Green v. *Frazier*, 253 U. S. 233, 240; *Wilson* v. *New*, 243 U. S. 332, 358, 359; *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549, 569; *Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467, 474; *McCray* v. *United States*, 195 U. S. 27, 54–61; *Atkin* v. *Kansas*, 191 U. S. 207, 223.)

For the purpose of building up the transportation systems of the country, Congress has decided that some such classification might be made by the commission and that there should be such uniform rates upon competitive traffic within such group as would "adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation." This regulation is clearly a legitimate regulation of interstate commerce.

The State of Texas, therefore, may not complain that its railroads are grouped with railroads in other States and are directed to charge rates in accord with those charged on the other railroads, and to charge for intrastate transportation rates which accord with those charged for interstate transportation.

The questions which are submitted by the Transportation Act to decision by the Interstate Commerce Commission are administrative and not judicial questions. Therefore those clauses of the Constitution which deal with the exercise of judicial power in cases to which a State is a party do not apply: they do not require the decision of administrative questions by the courts.

While the State is authorized by the Transportation Act, secs. 402 (19), 439 (6), 416 (3), to take part in proceedings before the Interstate Commerce Commission when that body considers the extension or abandonment of any railroad or its operation, or the issuing of new securities, or the regulation of some charges and practices which are subject to the commission, it does not follow that in the absence of such provisions in the Transportation Act the State would be a necessary party to those proceedings or that the questions involved are of a judicial nature.

In those matters Congress has power to regulate the railroads which conduct interstate transportation, and it may regulate them either directly or through a commission. The decisions of the commission do not involve the question whether the railroads and the States have performed their duties toward each other; they do not involve the question whether State regulations interfere unduly with interstate commerce. They are based on the proposition that when a railroad conducts interstate transportation Congress may directly or through a commission determine what course the company must follow in the future in order to conduct, or to be able to conduct, that transportation according to the wishes of Congress expressed through legislation or through an administrative decision. Such decisions are not judicial in their nature.

> A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to

> exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind. (*Prentis* v. *Atlantic C. L. Co.*, 211 U. S. 210, 226.)

(See also *Louisville & N. R. Co.* v. *Garrett*, 231 U. S. 298, 305, 312–314; *Ross* v. *Oregon*, 227 U. S. 150, 163; *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, 271, 278; *San Diego L. & T. Co.* v. *Jasper*, 189 U. S. 439, 440; *McChord* v. *Louisville & N. R. Co.*, 183 U. S. 483, 495; *Interstate Com. Comn.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 162; *Interstate Com. Comn.* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 167 U. S. 479, 499, 500, 501, 505, 506, 511; Noyes, American Railroad Rates, 212 note, 250; Smalley, Railroad Rate Control (Publications of the American Economic Assn.), 48–50.)

> The function of rate-making is purely legislative in its character, and this is true, whether it is exercised directly by the legislature itself or by some subordinate or administrative body, to whom the power of fixing rates in detail has been delegated. The completed act derives its authority from the legislature and must be regarded as an exercise of the legislative power. (*Knoxville* v. *Knoxville W. Co.*, 212 U. S. 1, 8.)

This court has pointed out the distinction between judicial and administrative powers not only in rate

cases but also in other cases involving railroad regulation. For example, in *Honolulu R. T. & L. Co.* v. *Hawaii*, 211 U. S. 282, the court held that an injunction which constituted

> in substance a regulation of the operation of the railway was, in the first place, not within the limits of the judicial power, and, in the second place, totally inconsistent with the power of regulation vested unmistakably by the legislature in the executive authorities. (P. 293.)

(See also *Atlantic C. L. R. Co.* v. *North Carolina Corp. Comn.*, 206 U. S. 1, 19.)

For the purposes of this case the Railroad Labor Board is to be considered as a board created for the purpose of investigating disputes between carriers and their employees and making recommendations as to wages and working conditions. So considered, there can be no legal objection to the making of awards by that board.

As we have already seen (pp. 13, 14, *supra*), the Transportation Act provides a method by which, in case railroad companies, express companies or sleeping-car companies are unable to reach agreements with their employees as to wages or working conditions, the disputed matters shall be submitted to a board of nine members appointed by the President, by and with the advice and consent of the Senate. It is provided that three members shall be selected from a list of not less than six nominees whose nominations shall be made and offered by employees in such manner as the Interstate Commerce Commis-

sion shall by regulation prescribe; that three members shall be selected from not less than six nominees whose nominations shall be made and offered by carriers in such manner as the commission shall prescribe; and that three members representing the public shall be selected by the President from the general public. The decisions of the board shall be "communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine." The board is also authorized to determine whether its decisions have been violated and make public its decisions in such manner as it may determine. But no further provision is made for enforcing the decisions of the board.

Whether those decisions are legally binding upon the parties is a question which it is not necessary for the court to decide in the present case, for the parties directly interested in them have complied with the awards of the board without raising any question as to their binding force.

Even if the awards of the board are of binding force, Congress has power to establish such a board and such principles for the adjustment of labor disputes as are set forth in the act.

The act does not, as the State contends, interfere with the alleged right of the carriers and the employees to fix wages and working conditions by contract. Its application is expressly restricted to those cases in which the employers and the employees are unable to reach agreements. It is simply to

meet such cases, in order to keep the instrumentalities of interstate transportation in uninterrupted operation at all times, that Congress has provided a means for the peaceful adjustment of labor disputes. The end certainly is legitimate, and the means are plainly adapted to that end and are not prohibited by the Constitution.

But what better means for attaining that end could be devised? Congress can not in fairness provide that in case of disputes the *status quo ante* shall be preserved or that one side shall always yield to the other. It can not leave the parties to the courts, for what is needed is not an adjudication as to what the rights of the parties have been in the past but a determination as to what the relations between the parties shall be in the future, and such a determination is not judicial in its nature (pp. 35–38, *supra*). It has, instead, very properly established a board, thoroughly representative in its composition, to deal with those questions under general rules established by Congress.

Congress doubtless intended that the composition of the Labor Board should give such weight to its decisions that as a general rule it would be unimportant whether or not they were legally binding upon the parties. Whether the parties are as a matter of law obliged to comply with the awards of the board is a question which has not yet been decided by this court and, as we have already pointed out, it is a question which need not be decided in the present case.

But it seems to be self-evident that the nature of the services rendered to the public is such—that those services are so impressed with a public interest—that in order to prevent any interruption in transportation Congress may authorize this board to establish wages and working conditions which shall be binding upon both carriers and employees if they continue to serve the public,[2] subject only to restraints similar to those which are imposed upon the decisions of commissions which regulate the services and charges of carriers and other public utilities.

In *Wilson* v. *New*, 243 U. S. 332, where railroad companies and railroad employees had been unable to reach an agreement as to hours and wages, and Congress had thereupon enacted a statute which established a standard of hours of labor and made temporary regulations affecting the wages, this court sustained the legislation, basing its decision upon grounds which would support more thorough and more lasting regulations of wages and working condistions than in the statute then before the court. It is true that several justices dissented; but the present statute fully meets the dissenting opinion of Mr. Justice Day, for it provides for careful investigation of labor controversies prior to the making of any award, and it establishes for that purpose a board whose very composition makes for fair treatment of all parties.

[2] See Higgins, A New Province for Law and Order, 32 Harv. L. Rev. 189, 193–194.

Congress has sufficiently set forth the principles to be observed in the adjustment of labor disputes.

The State contends that Congress has attempted to delegate legislative power in violation of the Constitution in that it has attempted to confer upon the Railroad Labor Board power to determine wages and working conditions without laying down adequate rules for its guidance. But the act establishes more definite principles to be considered by the board in reaching its decisions than are laid down in the provisions of the Interstate Commerce Act under which the Interstate Commerce Commission regulates rates. (See *Intermountain Rate Cases*, 234 U. S. 476; and also *Interstate Commerce Comm.* v. *Goodrich T. Co.*, 224 U. S. 194.) And even if it did not do so, it might well be sustained, for moderate grants of discretion to administrative bodies are clearly permissible. (See, *e. g.*, *First National Bank* v. *Union Trust Co.*, 244 U. S. 416, 427; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 542, 543; *Cook* v. *Burnquist*, 242 Fed. 321, 325; *State* v. *McCarty*, 5 Ala. Ap. 212, 226, 228; *Blue* v. *Smith*, 69 W. Va. 761; *Lee* v. *Marsh*, 230 Pa. 351.) There are special reasons for sustaining such grants of discretion in the case of a board like the Railroad Labor Board. In the case of such matters as come before it, the Government can not properly simply refrain from action. It must reach some decision one way or another. The parties have been unable to reach an agreement, and the real problem before the Government is to find a substitute for that agreement. Only a theorist

would say that in all instances the applying of some abstract principle would be the best substitute for agreement between the parties. In some matters, such as working conditions, the best practical results may be obtained by simply submitting the dispute to the composite judgment of a board consisting of men who can appreciate the viewpoint of the employers, of men who can appreciate the viewpoint of the employees, and of members of the general public who are considering similar problems frequently and are thus both "appointed by law" and "informed by experience." Such a decision will carry weight because of its origin and for that very reason will probably better satisfy the interested parties than would a decision reached in other ways, even though the other decision might appear to strangers to the case to be more in accordance with abstract justice.

The State also contends that the act violates the Constitution in that it does not require the boards in considering wages and working conditions to take into account the value of the services to the carriers and to the public, and the value of the articles handled in commerce. The State, however, does not show that the value of a locomotive to the carriers and to the public or the nature of the goods hauled by the locomotive fixes the price which the railroad must pay for it, or that the price of labor should be fixed on any other basis than that on which the prices of materials are based. To sustain the contention of the State it would be necessary for the

court to decide that when wages are regulated the workers are entitled to share in the profits of a business—a most far-reaching proposition.

Congress may properly provide that some members of the Railroad Labor Board shall be appointed from lists of names submitted by the carriers, some from lists submitted by the employees and some from the general public.

The State contends that the section of the act which designates the groups from which members of the board may be chosen violates the Constitution in that it grants special privileges to some groups of men and denies to other citizens privileges and immunities, and attaints them, in that not all citizens are eligible to appointment, and that it deprives the President of his constitutional rights in restricting his right of appointment and in depriving him of his plenary power, without the advice and consent of anyone, to fill vacancies which may happen during the recess of the Senate.

If the contention of the State is sound, the court may be called upon to declare invalid all laws which provide for minority representation upon appointive boards, such as the Interstate Commerce Commission, the Federal Trade Commission, the Civil Service Commission, and similar boards.

In order to be effective, boards for the adjustment of labor disputes must be selected in some such manner as that in which members of the Railroad Labor Board are chosen. Members of the National War Labor Board, the Shipbuilding Labor Adjustment Board, and other boards for the adjustment

of labor disputes, both in the United States and abroad, have been selected or suggested in manners very much like that followed in organizing the Railroad Labor Board. They have been composed of members selected or suggested by organizations of employers and by organizations of employees as well as of representatives of the public.[3]

It will be observed, moreover, that neither the President nor any appointee of the President nor any aspirant for appointment is complaining of the provisions of the act. This court has declared repeatedly that if a provision of the Constitution which is invoked was not intended primarily for the protection of a party before the court, the court will not inquire into the validity of the governmental action.

The Transportation Act does not deny to the commissions, to the public or to individual citizens any right to complain to or to appear before the Railroad Labor Board. If the board improperly denies the rights of any party, that fact does not render the act itself unconstitutional. But it is submitted that the board may properly confine its hearings to the carriers and their employees.

The State contends that in view of the due process clause of the Fifth Amendment, the act is rendered void by the alleged fact that no opportunity is given to the commissions, to the public or to individual citizens to complain to or to appear before the Railroad Labor Board, although, it is said, the acts of

[3] See, *e. g.*, Monthly Labor Review (of U. S. Bureau of Labor Statistics) for January, 1917, 11–19; July, 1919, 277; November, 1919, 342; February, 1920, 41; May, 1920, 172, 216, 217; June, 1921, 134, 135, 183; Canadian Industrial Disputes Investigation Act, 1907, as amended May 4, 1910, secs. 5–12.

the board affect the public, and the railroad charges to be paid by the public, in a material way.

But it must be remembered that the essential problems before the board simply concern the relations between employers and employees.

4. Conclusion.

We have discussed at considerable length the contentions of the State and believe that we have shown that the court may properly dismiss the bill upon the ground that it is entirely lacking in merit.

But it is submitted that it is not necessary for the court to go so far in the present case—that it is not necessary for the court to go through the vast mass of vague statements and abstract propositions which the State has dumped into this bill to discover whether there is any particle of merit therein—but that the bill may be properly dismissed without further consideration upon the ground that it does not present a justiciable controversy. The Government does not object to having the dismissal made without prejudice to the right of the State to file another bill in the proper court, if it is based upon the specific statement of a concrete case which would bring before the court a controversy of a justiciable nature, and presents matters over which the court may exercise jurisdiction.

James M. Beck,
Solicitor General.
Robert P. Reeder,
Attorney.

December, 1921.

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IN THE

Supreme Court of the United States

October Term, 1920

IN EQUITY

ORIGINAL No. 24

STATE OF TEXAS, Complainant

vs.

THE INTERSTATE COMMERCE COMMISSION AND THE RAILROAD LABOR BOARD, Defendants.

Brief, filed by leave of court, by

ALFRED P. THOM,
General Counsel of the Association of Railway Executives, Appearing as Amicus Curiae.

PRESS OF THE SUDWARTH COMPANY, WASHINGTON

INDEX.

	Page
Statement of the Case	1
Argument	15
I Provisions of Transportation Act, complained of, are administrative	15
II Constitutional Power	16
III Interpretation of the Act	25
(1) Rates	27
(2) Extensions and Abandonments	33
(3) Pooling and Consolidations	34
(4) Railroad Labor Board	35
(5) Authorized Regulation by Congress supreme	36

LIST OF CASES CITED.

American Express Company vs. Caldwell, 244 U. S. 624	23
California vs. Pacific R. R. Co., 127 U. S. 39	19, 20
Cook vs. Pennsylvania, 97 U. S. 566	17
First National Bank vs. Union Trust Co., 244 U. S. 420	20
Fletcher vs. Tuttle, 161 Ill. 41	10
Hammer vs. Dagenhart, 247 U. S. 269	19
Houston & Texas Ry. Co. vs. U. S., 234 U. S. 350	17, 18, 19, 23, 24
Illinois Central vs. Pub. Utilities Com'n, 245 U. S. 506	15, 18, 23, 30
I. C. C. vs. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S. 479	15
Louisiana vs. Texas, 176 U. S. 1	12
Louisville Bridge Co. vs. U. S., 242 U. S. 417	18
Louisville & Nashville R. R. Co. vs. Mottley, 219 U. S. 467	36
McCullough vs. Naylor, 4 Wheat. 316	20
Minnesota Rate Cases, 230 U. S. 399	19
Muskrat vs. United States, 219 U. S. 346	11
Oklahoma vs. A. T. & S. F. Ry. Co., 220 U. S. 276	12
Osborn vs. Banks, 9 Wheat. 738	20
People vs. Barrett, 203 Ill. 99	10
Plymouth Coal Co. vs. Pennsylvania, 232 U. S. 542	16
Second Employers' Liability Cases, 223 U. S. 1	19
State of Georgia vs. Stanton, 6 Wall. 50	10
Wilson vs. New, 243 U. S. 332	35

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STATEMENT.

The State of Texas, in this case, bases its right to complain and seek relief on three grounds:

1. On the ground that it is a shipper and user of transportation on existing lines of railroad.

2. That it is the owner and operator of a line

of railroad 33.55 miles in length, located wholly within the State and engaged generally in doing business as a common carrier, and

3. On the ground that it is a sovereign State of the United States having a constitution and laws and reserved rights, which, it alleges, have been invaded by provisions of the Transportation Act, 1920, enacted by Congress, which it alleges are in violation of the Constitution of the United States.

The bill alleges that the Interstate Commerce Commission and the Railroad Labor Board are respectively proceeding to administer the provisions of the Transportation Act and have entered orders and, in doing so, are causing, and have caused, a great loss to the producers and shippers of the State of Texas, a great diminution of freight and passenger traffic to the railroads of the State and have caused and are causing, great financial loss to the people of the State, producers, shippers and carriers alike, in violation of their constitutional rights.

The gravamen of the complaint is set forth in paragraph XXI of the Bill, which together with the prayers, are as follows:

> "Complainant avers that the Railroad Labor Board and the Interstate Commerce Commission, without power or authority, constitutional or otherwise, are each exercising functions, powers and authority attempted to be given to each of them respectively by act

of Congress in the 'Transportation Act of 1920' and are making findings, entering orders, and attempting to enforce its provisions in accordance with said act and several sections herein referred to, and are claiming and intend to exercise power and authority under said act and said several sections thereof.

"That the acts of the Railroad Labor Board in fixing wages, salaries, establishing working conditions, practices and regulations of the various employes of the railroads of the United States and of the State of Texas have caused an enormous increase in the amount of railroad operating expense; and that its orders in force and effect at the present time have resulted in unnecessary, unreasonable and unjust wage to many of the employes of the said railroads within the State of Texas; that such salaries and wages are out of proportion to wages paid for like services in other and similar positions and employment, paid and received by the people of the State of Texas, and is an unjust and unreasonable demand upon the railroads of the State of Texas resulting in the necessity for and an increased operating income; and complainant further avers that by reason of such unjust, unreasonable wages, salaries, working conditions, practices and regulations, the Interstate Commerce Commission acting under the pretended authority of the Transportation Act in order to create and obtain for the railroads of the State of Texas an operating income pursuant to the Act of Congress of 1920 above alleged, and sufficient to pay the wage scale

and carry out the practices and regulations so fixed and maintained by said Labor Board, has fixed fares and charges for the transportation of passengers and freight which are unjust and unreasonable. All of which causes and has caused a great loss to the producers and shippers of the State of Texas, a great diminution of freight and passenger traffic to the railroads of the State of Texas and has caused and is causing a great financial loss to the people of the State of Texas, producers, shippers and carriers alike in violation of the constitutional right particularly guaranteed to them by the Fifth and Fourteenth Amendments of the Constitution of the United States.

"That the Interstate Commerce Commission has granted Certificates of Convenience and Necessity to railroads within the State of Texas authorizing and directing them to cease operation of trains and to dismantle their railroads and dispose of their physical property contrary to the Constitution and laws of the State of Texas, and in disregard of their contract obligations with the people of the State of Texas, and particularly of the vicinities through which such railroads pass. That the Interstate Commerce Commission has refused to grant Certificates of Convenience and Necessity and to permit railroads within the State of Texas to advertise and charge fares and freight rates and to receive passengers and freight from connecting carriers and transport same in accordance with the laws of the State of Texas, and has refused to per-

mit the construction of railways within the State of Texas by persons and corporations who have complied with the Constitution and laws of the State regulating the chartering, organization, construction and maintenance of railways wholly within the State of Texas. That the Interstate Commerce Commission is exercising the powers attempted to be granted in the Transportation Act to supervise and regulate the issuance of bonds, certificates and other securities by the railroads of the State of Texas when so issued in accordance with the Constitution and laws of the State of Texas regulating the issuance of bonds, certificates and securities; that thereby the railroads of Texas and the people of Texas are compelled to submit to the demands and conform to the rules and regulations of the Interstate Commerce Commission at an unnecessary expense and great inconvenience resulting in the loss of property and in the taking of their property without due process of law contrary to their right guaranteed under the Constitution of the United States.

"And that the Interstate Commerce Commission is making rates, charges, fares, issuing orders, regulations and schedules and establishing practices requiring and compelling the railroads of the State of Texas to comply and conform thereto; and that the said Interstate Commerce Commission has issued an order placing the State of Texas in what is designated as the 'Western Freight Group' and has and will continue to require the railroad companies of the State of Texas to charge and control fares, rates and charges

contrary to the statutes of the State of Texas and its Constitution and valid contracts of said railroad companies, all of which acts, orders, rules and regulations are contrary to the statutes and Constitution of the State of Texas and the United States, and as heretofore alleged, the railroads of Texas are now and will be called upon to pay more than their just share upon property within the State to supply the operating income demanded by the railroads of the United States; that said Interstate Commerce Commission intends and will whenever it deems it necessary and desirable, authorize the creation and operation of trusts, combinations and monopolies among railroads in Texas without regard for the Constitution and statutes of Texas relative thereto, and thereby the people of the State will be deprived of their right to have competing carriers and freight competition; that the State of Texas in its sovereign capacity is being sued and has been and will be sued and made a party to suits involving the rights, powers, privileges, sovereignty and property of said State before the Interstate Commerce Commission of the United States contrary to the Constitution as herein alleged.

"Complainant further alleges that great and grievous injury and damage is resulting to it and its citizens by reason of the enactment of the Act of Congress known as 'The Transportation Act of 1920'; that it is shorn of large powers of sovereignty, viz: legislative, executive and judicial powers reserved to it by the Constitution of the United States, and it is deprived of privileges and immuni-

ties guaranteed to it as a sovereign under the Constitution of the United States, and that citizens situated in the boundaries of Texas and that its citizens and railroads are unauthorized to do and prohibited from doing acts and things otherwise legal and lawful except for the provisions of said act and the acts of the defendant herein.

"Forasmuch, therefore, as complainant is without adequate remedy at law and its only protection in the premises must arise from the powers of this Honorable Court, in the exercise of its original jurisdiction, the State of Texas respectfully prays that there be granted a writ of subpoena issuing out of this Honorable Court to be directed to the Interstate Commerce Commission by service upon its chairman, Edgar E. Clarke, to the Railroad Labor Board by service upon its chairman, R. M. Barton, the defendants herein named, demanding them and requiring them and each of them to appear and answer thereto, but not under oath, answer under oath being expressly waived; and that the so-called Transportation Act of 1920, and particularly Sections 300 to 316, inclusive, 402 to 407, 416 and 418, 402, sub-divisions 18 to 22, 407, subdivisions 1 to 8, 422, subdivisions 1 to 18, 439, subdivisions 1 to 11, be declared invalid, unconstitutional and void; and that the defendants named herein and constituted bodies corporate be declared and adjudged illegal and without statutory or constitutional authority; and that any and all laws or parts of laws, directing, empowering, regulating the creation, appointment, qualification and terms

of service and granting authority to defendants named and the several members thereof be declared invalid, unconstitutional and void and the acts, orders and all things authorized to be done or performed by defendants be declared void, invalid and of no force and effect and without force of law, or if any part of said Transportation Act of 1920 be held to be constitutional, the remaining sections and portions thereof and all other laws in aid thereof be declared invalid, unconstitutional and void; and that the defendants and each of them be enjoined and restrained from enforcing all or such invalid and unconstitutional portions of the laws herein complained of in the State of Texas in such a manner as to interfere with the regulation of internal affairs of the complainant and the enforcement of its Constitution and its constitutional and valid laws, regulations and contracts, and the constitutional rights of its citizens, and that complainant may have such other and further relief as to this court may seem just and equitable in the premises."

Perhaps it may be illuminating to recapitulate the rights which the State claims in its sovereign capacity and which it alleges have been violated by the exercise of Federal authority in the Transportation Act. It sets up and relies on:

1. State statutes which provide for the incorporation of railroads with no limitation as to time, place, necessity for, or circumstances under which railways may be incorporated and constructed.

2. State statutes regulating abandonment and operation of trains.

3. Constitutional provisions of the State which prohibit the consolidation of parallel or competing lines and State statutes which prohibit the consolidation of railroads within the State with any railroad organized under the laws of any other State or of the United States, and statutes which provide for the maintenance of general offices within the state.

4. Statutes of the State which regulate the issuance of stocks and bonds of railroad companies.

5. Statutes of the State regulating the fixing of rates for transportation.

6. Constitutional provisions which preserve freedom of contract and statutory provisions regulating monopolies and violations of anti-trust laws.

It claims that the rights expressed in these enactments of the State constitution and statutes are inviolate and superior to any Federal authority.

It will be observed that, in the contentions made in the bill, the State does not present for adjudication, or include in its prayer for relief, any property rights under the constitution, or under any of the laws of the State of Texas, or of the

United States; but that, in every instance, it claims that the Transportation Act has deprived it of some right to regulate or control one or more of the several matters covered by the State's statutory and constitutional provisions, as to which it claims absolute supremacy and sovereignty.

The right of the State to maintain this bill, for the purposes mentioned, seems to be settled adversely by the decision of this Court in the case of State of Georgia vs. Stanton, 6 Wall. 50.

In that case it was held that a bill to enjoin the carrying into effect by representatives of the United States of certain acts of Congress, claimed to be unconstitutional, presented a political question only and could not be sustained, the Court holding that:

> "It is only when the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceeding, that Courts of Justice can interpose relief. This Court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual, or threatened, operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here." (Idem, p. 75.)

See also:

> People vs. Barrett, 203 Ill. 99;
> Fletcher vs. Tuttle, 161 Ill. 41.

In the case of Muskrat vs. United States, 219 U. S. 346, the Court, in considering whether or not there could be in that case a judicial determination of the constitutionality of an act of Congress, speaking through Mr. Justice Day, said at page 361:

> "It is therefore evident that there is neither more nor less in this procedure than an attempt to provide for a judicial determination, final in this court, of the constitutional validity of an act of Congress. Is such a determination within the judicial power conferred by the constitution, as the same has been interpreted and defined in the authoritative decisions to which we have referred? We think it is not. That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. The right to declare a law unconstitutional arises because an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the Government. This attempt to obtain a judicial declaration of the validity of the act of Congress

is not presented in a 'case' or 'controversy', to which, under the Constitution of the United States, the judicial power alone extends."

See also:

Louisiana vs. Texas, 176 U. S. 1, especially concurring opinion of Justice Harland, pages 26-7;
Oklahoma vs. Atchison, Topeka & Santa Fe Railway Company, 220 U. S. 276.

In the case at bar, there are allegations of the unconstitutionality of certain provisions of an Act of Congress, and the prayer is that the authorities created or authorized by it to make orders shall be enjoined from so doing. This presents no "case" for the action of a court. The order, claimed to be invalid in itself, inflicts no injury. It is only when an attempt is made to put it into effect that a justiciable case arises. If a carrier should undertake to put into effect an invalid order of such an authority, a case for relief would arise, and the carrier could not justify under an unconstitutional statute.

It is not fair to jurisprudence to attempt to settle great constitutional questions like those presented here on abstract considerations not involving definite complaints of wrongs to persons or property.

Aside, however, from the objections on the grounds mentioned, the bill is without equity and is based on what, we respectfully submit, is a

misconception of the constitutional justification of the Transportation Act and of the lawful rights and authority of the parties.

The State, in its bill, claims the unqualified right to regulate intrastate commerce within the State and all rates, fares, wages, charges and contracts relative thereto, entered into or made effective within the State, and the unqualified right to regulate private corporations, and combinations, and combinations in restraint of trade and commerce, in such intrastate commerce. (Bill, paragraph VII.)

It alleges that the railway corporations, either by the receipt of grants of land from the States or by the exercise of charter powers and privileges granted by the State, have become obligated by contract, express or implied, to be bound by the laws of the State and by the "lawful rates, fares, charges, classifications, regulations and practices prescribed by the State, or by the agencies of the State for such purpose." (Bill, paragraphs X and XII.)

The bill then proceeds to challenge the constitutional validity of subdivisions 18, 19, 20, 21 and 22 of Section 402 of the Transportation Act, relating to the regulation of the extension and abandonment of lines of railroad employed in intrastate commerce (Bill, paragraph XV, p. 20); subdivisions 1, 2, 3, 4, 5, 6, 7 and 8 of Section 407, relating to the regulation of pooling of freights or earnings and of consolidations (Bill, paragraph XVI, p. 23); of Section 422 (Section 15a of the

Interstate Commerce Act), relating to the regulation of interstate rates (Bill, paragraph XVIII, p. 33 et seq.); of Section 416 (amending Section 13 of the Interstate Commerce Act), regulating intrastate rates in so far as they unjustly discriminate against interstate commerce (Bill paragraph XIV, p. 41), and Sections 300 to 316, creating the Railroad Labor Board and relating to the arbitration of differences as to the wages, rules and working conditions of employees of railroads employed in interstate commerce in so far as they threaten to interrupt interstate commerce. (Bill, paragraph XX, p. 48.)

The challenge is, broadly speaking, on the ground that the provisions referred to violate the Tenth Amendment to the Constitution of the United States, which protects the reserved rights of the States; the provisions of subdivision 3, Section 8, Article I of the Constitution, which confers the power upon Congress to regulate interstate commerce; Sections 1 and 2 of Article III of the Constitution, which confers the judicial power of the United States upon the Supreme Court and the inferior courts of the United States; the Eleventh Amendment to the Constitution, which relates to suits against a State; Section 1 of Article I and subdivisions 19 of Section 3 of Article I of the Constitution, which confer the legislative power exclusively upon Congress; the Seventh Amendment to the Constitution, which guarantees the right of trial by jury, and the Fifth

Amendment to the Constitution, which prohibits the taking of private property for public use without just compensation.

ARGUMENT.

It is well settled that the provisions of the Transportation Act of which complaint is made are administrative and do not involve the exercise of a legislative power.

> "Having prescribed the final and dominant rule Congress may entrust its administration to a subordinate tribunal, such as the Interstate Commerce Commission."
>
> Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S. 479, 494;
>
> Illinois Central vs. Public Utilities Commission, 245 U. S. 506.

In the latter case it is said:

> "It is admissible for Congress to provide for the execution of this power through a subordinate body such as the Interstate Commerce Commission, and this it has done by the Act to Regulate Commerce."

Administrative bodies, with authority such as is in this Act conferred upon the Interstate Commerce Commission, are well recognized governmental institutions.

Plymouth Coal Co. vs. Pennsylvania, 232 U. S. 542.

It is also obvious that they deal with matters of regulation for the future and are not determining judicial controversies.

Accordingly Sections 1 and 2 of Article III, Section 1 of Article I and subdivision 19 of Section 3 of Article I, the Seventh Amendment and, as no allegation is made that any property has been taken, the Fifth Amendment of the Constitution may be eliminated from the discussion.

Proceedings before the Commission are clearly not suits in the meaning of the Constitution, and are not suits against a State. Therefore it is not deemed necessary to consider the Eleventh Amendment at length.

We assume that the real reliance of the complainant is the Tenth Amendment to the Constitution of the United States.

There is thus presented the broad question of the extent of the power of Congress to regulate interstate commerce.

Constitutional Power.

The history of the adoption of the Constitution of the United States, and the influence upon its adoption of the necessity to establish and protect the freedom of trade between the States is well known, and needs be adverted to only in the most general terms.

After the revolution, the selfishness in trade of these States possessing, by virtue of their location or otherwise, special commercial advantages, became so apparent and was so pronounced that there was a general recognition of the necessity, if there was to be an enduring and peaceful union, to establish an arbiter, which should not be any of the States but an authority impartial between them and representing them all, to regulate interstate commerce. It has been stated by this Court on more than one occasion (Houston & Texas Ry. vs. U. S., 234 U. S. 350; Cook vs. Pennsylvania, 97 U. S. 566), as it is in fact familiar historical truth, that no cause contributed more to the formation of the Union and to the adoption of the Constitution of the United States than the need for a uniform and impartial regulation of the commerce referred to.

Important as this was at the time of the adoption of the Constitution, it has become vastly more so because of the development and improvement of the means of commercial intercourse through the application to it of the forces of steam and electricity and the gasoline engine.

The Constitution ordained that, if Congress so enacted, there should be no state lines as to commerce between the States; and the development of commerce and the welfare of the public have made it necessary that Congress should, as it has done, so enact.

The power to regulate, conferred by the States in the Constitution on Congress, is not simply a

power to control, to surround by suitable restrictions and to prevent abuses; but is also a power to provide for, to foster, to encourage and to protect against unjust discriminations, inequalities and disadvantages by whomsoever sought to be imposed, whether by the carriers themselves or by any public authority, state or municipal.

These propositions are too firmly established by the decisions of this Court to be now questioned: Thus it is held:

> "Congress, which alone exercises the legislative power of the Government, is the constitutional protector of foreign and interstate commerce."
>
> Louisville Bridge Co. vs. U. S. 242 U. S. 117.
>
> "Under the commerce clause of the Constitution Congress has ample power to prevent the common instrumentalities of interstate and intrastate commerce, such as the railroads, from being used in their intrastate operations in such manner as to affect injuriously traffic which is interstate."
>
> Ill. Central R. R. vs. Public Utilities Commission, 245 U. S. 506.
> Houston & Texas Ry. vs. U. S. 234 U. S. 357.

This power of regulation, in its aspect of providing for and fostering interstate commerce, would be futile unless it were broad enough to ensure means and facilities and instrumentalities adequate and necessary to the existence and proper

conduct and development of interstate commerce, (California vs. Pacific R. R. Co., 127 U. S. 39), and the power would not be supreme if the judgment of Congress was not conclusive as to the standard of adequacy which must prevail.

The power of Congress must, in the nature of things, be and, under the authorities, is co-extensive with the instrument of interstate commerce.

Minnesota Rate Cases, 230 U. S. 399, 411.
Houston & Texas Ry. Co. vs. U. S., 234 U. S. 351.
Hammer & Dagenhart, 247 U. S. 269.

As stated by this Court in the Second Employers' Liability Cases, 223 U. S. 1, 48:

> "Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention of interruption, or to make that act more secure, more reliable, or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and, if the conditions under which the agents or instruments do the

work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical, and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

Congress may determine that the government itself must own and operate these instrumentalities (California vs. Pacific R. R. Co., 127 U. S. 39). It may authorize their use not only for the carriage of interstate commerce but for the carriage of state commerce. (First National Bank vs. Union Trust Co., 244 U. S. 420; McCullough vs. Naylor, 4 Wheat. 316; Osborn vs. Banks, 9 Wheat. 738.)

If it did establish or own and operate them, no one would deny that it would be competent for Congress to fix every rate, both state and interstate, which should be charged for a transportation service by such an instrumentality. If the United States Government hereafter owns them, the entire power of the States in respect to them will disappear.

This, it is obvious, does not mean that Congress would then have the power to fix all intrastate rates, or intrastate rates as such, but only intra-

state rates for services performed by an interstate carrier. The states would still have, and could not be deprived of, the power to fix rates on intrastate commerce not carried by and not affecting a carrier engaged in interstate commerce.

The power, broad enough to accomplish these results through the agency of government owned and operated instrumentalities, is not narrowed by the means adopted by Congress for its exercise; for the choice of means is within the legislative discretion of Congress and does not limit the power. Instead of government owned and operated systems, it may determine that privately owned and operated agencies are preferable in the public interest. If so, its power of regulation is just as broad and unrestricted as if the agencies were government owned. The constitutional basis in both instances is the power to regulate commerce.

An important memorandum on the subject of the powers of Congress, in respect to interstate and foreign commerce, was prepared in November, 1916—not long before his death—by Honorable Richard Olney, Attorney General and Secretary of State in President Cleveland's cabinet, and justly renowned as an eminent authority on constitutional law. A part of it is pertinent here and is respectfully presented for the consideration of the Court:

> "1. For all the purposes and functions of commerce between the states of the United Sattes, between such states and territories of the United States, and between such states and

territories on the one hand and foreign nations on the other, the United States is one country, with complete and exclusive jurisdiction over the whole subject—and state lines and jurisdictions are without significance.

"2. Commerce, in the constitutional sense, covers transportation and intercourse in all forms and whether existing when the constitution was adopted or since introduced and practiced.

"3. The national commerce power, being of such extent and exclusiveness, necessarily subjects to national regulation and control all the agencies and instrumentalities by which national commerce is carried on.

"4. It cannot be doubted that a railroad corporation created by a national charter is an apt instrument for the carrying on of national transportation and that the organization of such a corporation with all appropriate powers and duties is a fit subject for treatment under the commerce power."

In view of this broad and comprehensive grant of power by the States to the Federal Government to regulate—which means not only "to control and restrain," but to provide for, maintain "foster and protect"—the instrumentalities or agencies of interstate commerce and all their operations and activities—the extent of the regulation being confided to the discretion of Congress—it is difficult to understand why the contention should now be in-

sistently and gravely made that if Congress undertakes to regulate or fix the intrastate rates of an interstate carrier, it is invading the reserved rights of the states and violating the Tenth Amendment to the Constitution.

It cannot be denied that the power to provide for, foster and protect—all of which are involved in the power to regulate—includes the power to fix the standard of efficiency and adequacy of the means or instrumentalities for carrying on interstate commerce. That standard—the national standard—must be supported out of all the traffic, state and interstate, of the carriers. If a state disapproves of the national standard and may, by fixing state rates so low as to make an inequitable and inadequate contribution to the support of the interstate agency, it has the power to impose its standard on Congress, or to throw on interstate commerce and the commerce of other states, or on both, the burden of sustaining the national standard of efficiency and adequacy. In either event, Congress would be denied the exercise of its constitutional authority, and the State, not the nation, would be supreme in the national field.

Houston Texas Ry. Co. vs. U. S. 234 U. S. 352-355.
American Express Co. vs. Caldwell, 244 U. S. 624.
Illinois Central R. R. Co. vs. Public Utilities Com., 245 U. S. 506.

The proposition here stated, that the national

standard as to the adequacy and efficiency of the instrumentalities of interstate commerce cannot be surrendered to the state's judgment or prejudiced by the state's refusal to permit state traffic to make equitable contribution to the support, up to the national standard, of these instrumentalities, without an abdication in favor of the states of the power to regulate interstate commerce, follows from the principle announced in the case of Houston Texas Ry. vs. U. S., 234 U. S. 355, where the Court says:

> "It is also clear that, in removing the injurious discrimination against interstate commerce arising from the relation of intrastate to interstate rates, the Congress is not bound to reduce the latter below what it may deem to be a proper standard, fair to the carriers and to the public. Otherwise, it would prevent injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates, and to forbid any discriminatory action by interstate carriers which will obstruct the movement of interstate traffic over the lines in accordance with the terms it establishes."

If the national government has the power, conceded in the case just cited, to fix the standard of rates, state and interstate—which are merely the terms on which interstate commerce is conducted—a fortiori, it has the power to fix and maintain the standard of adequacy and efficiency of the instrument of interstate commerce, which constitutes the basic condition of its existence.

Such being the scope and extent of the constitutional power of Congress to regulate interstate commerce, it is for Congress to determine how much of its power it will at any time exercise.

In the Transportation Act, it has not chosen to go to the full extent of its power. It has not undertaken to fix all rates, state and interstate, of interstate carriers. The power it gives to the Interstate Commerce Commission, as to intrastate rates, is only the power to remove any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

Surely there is ample and undoubted constitutional authority for such a limited exercise of power.

Interpretation of the Act.

In this connection, it may be useful to discuss the proper interpretation, to the extent here pertinent, of the Act and the extent of the power thus conferred upon the Interstate Commerce Commission.

In construing the Act, it must be borne in mind that, up to the passage of this Act, the system of national regulation had for its purpose only the control and restriction of the carriers, and possessed no element of encouragement or protection

and no means of providing for and assuring the adequacy and efficiency of the means of transportation.

This is stated in the following terms by the Senate Committee on Interstate Commerce in its report transmitting to the Senate, with its approval, the Bill which, with amendments, afterwards became the Transportation Act, 1920:

> "Heretofore the regulation of transportation has been regarded merely as a restriction imposed upon particular carriers. For the first time it is proposed to look upon transportation as a subject of national concern and from a national standpoint. It is the duty of the Government so to exercise its power of regulating commerce among the states, and with foreign nations, that all parts of a common country shall enjoy adequate transportation facilities at the lowest cost consistent with fairness to the capital invested and to the men who manage and operate these facilities. The commerce of one community, in these days, is deeply involved in the commerce of every community in the land. All the railways we have, or substantially all, must be maintained; and, from time to time, they must be enlarged and additional facilities must be provided."

The constructive purpose here indicated found expression in section 500 of the Transportation Act, where it is declared:

> "It is hereby declared to be the policy of Congress * * * to foster and preserve in full vigor both rail and water transportation."

The plan adopted to carry this policy into effect, and the means provided to that end, are found in the rate provisions of the Act which are complained of in this case.

Rates.

It was realized that the policy "to foster and preserve in full vigor rail transportation" could be made effective only if the revenues which the carriers were permitted to earn from their operations, were adequate for that purpose, and hence Congress provided in paragraphs 2, 3 and 4 of Section 15 (a) as follows:

> (2) "In the exercise of its power to prescribe just and reasonable rates, the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

(3) "The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: Provided, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) "For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carrier only that

consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

On the face of these provisions the constructive purpose is expressed "to provide the people of the United States with adequate transportation"—another form of declaring the policy enunciated in section 500 "to foster and protect in full vigor rail and water transportation."

The means adopted was to provide out of rates a net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the property of the carriers devoted, as a whole or in groups, to the transportation service.

To accomplish this the Commission was required to determine from time to time the aggregate value of such property, and, in doing so, to include in its valuation all the property devoted to the service of transportation which it was required to include in its valuation under the Federal Valuation Act, section 19a of the Interstate Commerce Act. This included all the property of the carriers devoted to transportation, both that used in interstate and that used in intrastate transportation.

In other words, the statute directed that the revenues which should constitute a fair return should

be derived from both interstate and intrastate traffic, this including all the operating revenues and not imposing on interstate commerce alone the burden of furnishing the fair return.

There was, however, a difference in the method prescribed for the raising of this revenue from the two sources mentioned.

The Interstate Commerce Commission was given direct and primary jurisdiction to fix interstate rates, but only a supervisory power over intrastate rates to be exercised only if the states failed to establish intrastate rates which would not give preference to their own traffic over interstate traffic and would not unjustly discriminate against interstate commerce.

The only power over state rates denied to the states by Congress was the power to establish an unjust discrimination in favor of their own traffic over interstate traffic and to require the use of the instrumentalities of interstate commerce "in their intrastate transactions in such manner as to affect injuriously traffic which is interstate."

(Illinois Central R. R. vs. Public Utilities Commission, 245 U. S. 506.)

Manifestly, interstate commerce would be injuriously affected and unjustly discriminated against if it could not use the instrumentalities used by both on terms as favorable as intrastate commerce could—if interstate commerce had to pay the bill for maintaining, up to the national stan-

dard of adequacy and efficiency, the agency which was used interchangeably by both, while the state refused to make an equitable contribution. If the standard of adequacy expressly fixed by Congress in the Act must be supported out of the rates derived from both classes of traffic and the state could decline to bear their equitable proportion, either the Congressional standard must be abandoned, or the deficit caused by the refusal of the state must be made up out of increased interstate rates—and thus, in either case, the states would effectually regulate interstate commerce. No interpretation of the Act which would accomplish this result can be accepted.

Section 416 of the Act (Section 13 of the Interstate Commerce Act) confers upon the Interstate Commerce Commission, the National Agency, the power to judge as to this discrimination, and to remove it, if the action of the states results in such unjust discrimination.

It is equally obvious, from another standpoint, that the Act must be interpreted as authorizing the removal by the Interstate Commerce Commission of any unjust discrimination, created by a state, against interstate commerce, or any portion of it, in favor of intrastate commerce, or any portion of it.

Unjust discrimination may exist, and does exist, whenever interstate commerce is injuriously affected by the more favorable terms on which intrastate commerce is permitted to move. The more favorable terms on which intrastate commerce may

move, as compared with interstate commerce, may exclude the latter from markets which each is seeking, or from producing fields on which each is depending. Certainly more favorable terms permit those engaged in intrastate commerce to conduct their businesses at less cost and under more advantageous conditions than those engaged in interstate commerce and thus create an advantage to the more favored localities within a state than apply to localities which must deal on the less favorable terms prescribed by national authority for interstate commerce. This latter kind of unjust discrimination is that which is most in the public mind, and, as to which, the law is entirely clear that the national authority must possess the power to protect interstate commerce against any such inequality of commercial opportunity.

It is accordingly submitted that, from whatever standpoint the subject be viewed, the Act must be interpreted, in its provisions as to State rates, as conferring upon the Interstate Commerce Commission a power, and a power only, to see that all unjust and unreasonable advantages of state over interstate commerce, and all unjust discrimination of state against interstate commerce, are removed, and that there be no substantial inequality of commercial opportunity to the prejudice of interstate commerce in the use of the instrumentalities of interstate commerce.

It cannot be successfully asserted that the powers conferred by the Act, as to interstate rates and as to unjust discrimination against interstate com-

merce, are not within the constitutional grant of power made to the National Government by the States to regulate interstate and foreign commerce.

Nor can valid criticism be made of the method of rate-making, by groups, prescribed in the Act. It is the method which was adopted and followed by the Commission before the Act was passed. It is the only method possible. Rates must, in the nature of the case, be uniform in a given traffic territory or group. It is impracticable to prescribe different rate levels for the several carriers. They must be made, and have always been made, except in the era of rate-cutting and its consequent disorganization, by reference to average conditions in a group, and this is all that the Act requires and is proper and lawful regulation.

Whether the recapture clause is constitutional need not here be considered, for there is no allegation in the Bill adequate to sustain the right of this complainant to attack it.

It is respectfully submitted that no decision should be made in this case as to the validity of this recapture clause. That question should await a real case presented by a party having a substantial property right which he alleges has been invaded and for which he seeks protection.

Extensions and Abandonments.

It being a constitutional power of Congress to "foster and protect" interstate commerce and to preserve its instrumentalities in full vigor, it is

manifestly within its power to preserve their credit, to prevent the waste of their means and to ensure the application of available funds to the purpose of fulfilling charter obligations as to service to the public. While it may not be within the constitutional power of Congress to require extensions beyond the scope of a carrier's charter obligations, it is manifestly within its power, and an exercise of lawful regulation, to prevent the waste of a carrier's resources in the construction of useless extensions, which may be used to impose an unnecessary burden on the users of transportation, and also within its power to authorize the abandonment of useless lines, the continuance of which would involve an impairment of the carrier's ability to perform its public duties except at the cost of the continuance of an unnecessary and unjustified burden upon the public. This is a legitimate exercise of the power of regulation.

Pooling and Consolidations.

It is for the practical judgment of Congress to decide whether, if there be a regulated pooling of earnings among carriers, it will save unnecessary duplication of service and, if so, to authorize the saving, for every unnecessary duplication of service is a drain to that extent on the resources of the carriers and, if continued, would furnish a basis for larger charges for the transportation service. If it is good for the public that transportation energy be not wasted, but be organized and efficiently

directed, then manifestly the regulated pooling of earnings is justified as a part of legitimate regulation.

The same general considerations apply to consolidations. Consolidations of carriers promote economy and lessen the public burden of support. If carried out as in the Act directed, by preserving competition and equalizing transportation conditions and relatively transportation revenues and costs, it simplifies the problem of rate-making and removes existing causes of rate inequalities. Manifestly the regulation of consolidations, as done in the Act, is also a proper exercise of the constitutional power of regulation.

Railroad Labor Board.

Since the case of Wilson vs. New, 243 U. S. 332, it can scarcely be doubted that it is a proper exercise of the constitutional power of regulation to fix, by Congressional action or authority, wages and adjust labor disputes between interstate carriers and their employees, in order to avoid an interruption of the public service by these vital agencies. This is as far as the Transportation Act goes, and, while the power of regulation may extend much further, the validity of this exercise of power under the commerce clause must now be conceded.

If what has been done in the Act is within the power of regulation conferred by the Constitution, then the Act of Congress is supreme. It does not violate the Tenth Amendment, because no reserved power of the States has ben invaded.

It makes no difference what the laws of the State on the subject are, nor whether they are expressed in a State Commission's order, or in a State statute, or in a State constitution, for the Act of Congress, being a proper exercise of a power conferred by the Constitution of the United States, is supreme, is the Act of the State itself through its chosen agent, the National Government, on which it has conferred complete and supreme power to deal with the subject and to the recognition of which as supreme the State is bound by its covenant with its sister states.

It being a proper exercise of the power of regulation, it likewise, cannot be prevented or interfered with by any contract right, for all contracts with interstate carriers are entered into with the implied understanding that they are, and must be, subject to the full exercise, then or thereafter, of the power of regulation, so that when valid regulation is enacted inconsistent with the contract, the contract necessarily fails.

Louisville & Nashville R. R. vs. Mottley,
219 U. S. 467.

The legislation of the States in whatever form expressed, its contracts and its policies, must give way to the exercise by Congress of its legitimate powers of regulation.

This does not constitute a denial of a reserved right of a State, for the State has reserved no such right.

On the contrary, it is the protection and enforcement of the acquired right of the State—a right which it acquired when it entered the Union—to be assured by a national and impartial administration of the powers of government of adequate and efficient means of transportation, to equality, as between it and its sister states, of commercial opportunity and to freedom of trade with, and unobstructed enjoyment of, the producing fields and commercial markets of all the States.

It is not a denial, but is an assertion and a preservation, of States Rights.

Respectfully submitted,

ALFRED P. THOM.

WASHINGTON, D. C.
DECEMBER 1, 1921.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THE STATE OF TEXAS,
Complainant,
vs.
THE INTERSTATE COMMERCE COMMISSION, ET AL,
Defendants.

Original No. 24 In Equity.

BRIEF FOR THE STATE OF TEXAS

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Washington, D. C., December 3, 1921.

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INDEX

Preliminary Statement 1
Statement of Case 2
The Bill of Complaint..... 3
Issues of Fact..... 9
Questions of Law..... 13

Argument

Section I

Rate making power..... 15
Right to order abandonment and extensions..... 17
Regulations of stock, bonds and securities..... 18

Section II

The Railroad Labor Board..... 19
Conclusion 23

INDEX OF AUTHORITIES

Adair v. U. S. 208 U. S. 161, 180 21
Am. Dig. Volume 15, page 689 (A-1) 22
Bridges v. Shelcross, 6 W. Va., 562 22
Birdsong, in re, 39 Federal 599 22
C. B. & Q. R. R. Co. v. Chicago, 166 U. S. 226 21
Century Digest, Vol. 37, page 1816 22
Cooley (7th Ed.), page 471 22
Dartmouth College Case, 4 Wheat. 518 21
Ex Parte 74, 58 I. C. C. 220 11
French v. State, 29 L. R. A. 113 22
Guthrie Leader v. Cameron, 41 Pac. 634 22
Harvey v. State, 21 N. E. 890 22
Hendricks v. State, 49 S. W. 705 22
Interstate Rates, Texas, No. 11, 764, 60 I. C. C. 421 11
L. & N. Ry. Co. v. Ky., 161 U. S. 677, 702 19
Lucas, Ex Parte, 61 S. W. 218 22
McGehee on Due Process of Law, p. 30 21
M. P. R. R. Co. v. Kansas, 216 U. S. 262 17
Monongahela Nav. Co. v. U. S., 148 U. S. 312-36 21
N. Sec. Co. v. U. S., 193 U. S. 347 19
Overshiner v. State, 51 L. R. A. 748 22
State Ex. Rel Crow. v. Towns, 54 S. W. 552 22
Stoutenburgh v. Frazier, 48 L. R. A. 220 22
U. S. v. Lynch, 188 U. S. 445 21
U. S. v. Cress, 243 U. S. 316 21
Wilson v. New, 243 U. S. 332 20

IN THE

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THE STATE OF TEXAS, *Complainant* vs. THE INTERSTATE COMMERCE COMMISSION, ET AL., *Defendants.*	Original No. 24 In Equity.

BRIEF FOR THE STATE OF TEXAS

PRELIMINARY STATEMENT

The issues raised in No. 206, Railroad Commission of Wisconsin, et al, vs. Chicago, Burlington & Quincy Railroad Company, and also in No. 298, State of Texas vs. Eastern Texas Railroad Company, et al, are also raised in this bill. Both of the above cases are under consideration by the Court at this time, and the briefs filed are, as to the questions raised, exhaustive. We have considered it best to adopt the briefs of Appellants and Interveners in No. 206 and of Appellant in No. 298, as our brief on such questions as are therein treated and such additional briefs as we now present on these questions are asked to be considered in the nature of a supplemental brief. Complainant is a party to each of the above cases.

We call attention also to Appellant's brief in another case now under consideration on some of the same questions, the case being No. 283, State of New York, et al, vs. United States, et al.

STATEMENT OF CASE

This is a suit of a civil nature brought by the State of Texas in its sovereign capacity under the Constitution of the United States, and particularly of paragraphs 1 and 2 of Section II of Article III, giving this Court original jurisdiction. The action is by the State against citizens of another State. More than the jurisdictional amount is involved.

Complainant sues as a sovereign State and alleges that it has exercised its powers under the Constitution of the United States to control its internal commerce; has adopted a constitution and passed laws completely regulating and controlling same and especially with reference to equal rights, due process, special privileges and franchises, perpetuities and monopolies, private corporations, common carriers and railways. Has passed all necessary or expedient laws for the incorporation of common carriers; the regulation of the issuance, sale and ownership of stocks, bonds and securities; and the complete policing of same, protecting the interest of the carriers as well as the public.

It is also the owner of a line of railway and a large shipper of freight and patron, through its officers and employees, of their passenger service. A department has been created under the constitution of the State known as the Railroad Commission, which exercises legislative, administrative and judicial powers in the enforcement of all such laws, making regulations, fixing rates, fares and charges, and generally with authority completely to administer all laws of the State relative to carriers with provisions for

meeting such emergencies as may arise, in order to fully and completely protect the interest of both the carriers and the people. Such sections of the Constitution and such Statutes as are relied on, are copied in the bill as exhibits and are here respectively referred to.

THE BILL OF COMPLAINT

In Paragraph I, II and III, the parties complainant and defendants are set out together with grounds claimed to give jurisdiction.

In Paragraph IV it is alleged: That all railway corporations which own and operate lines of railway in the State of Texas are incorporated and chartered under the laws of the State, except the Texas & Pacific Railway Company, which is chartered under the laws of the United States.

In Paragraph V it is alleged: That in 1845 Texas was admitted into the Union; that it has since been continuously a State of the United States, and that it was so admitted on an equality with other States in all respects whatsoever, except that it retained the ownership of, and ever thereafter continued to own, all public lands within its borders.

In Paragraph VI it is alleged: That, in the Constitution of the United States, no power of police or legislation with respect to the internal affairs and intrastate commerce of Texas is delegated to the National Government.

In Paragraph VII it is alleged: That among the powers reserved to the States are, the right to regulate intrastate commerce, and all rates, fares, wages, charges, and contracts relative thereto entered into or made effective within any State, and the right to regulate private corporations, and combinations and restrictions in trade and commerce in intrastate commerce.

In Paragraph VIII it is alleged: That, under its several constitutions and various statutes, the State of Texas has

exercised the powers reserved to it as aforesaid, and that its constitution contains provisions as stated in this paragraph.

In Paragraph IX it is alleged: That, under its constitution, the State of Texas has enacted a full and complete code of laws relating to railroads and common carriers, corporations, trusts and monopolies, and that said laws contain provisions as stated in this paragraph.

In Paragraph X it is alleged: That the State of Texas has granted to various railroad corporations of that State approximately 24,454,713 acres of land, upon condition that they comply with the terms of their charters, including laws applicable to rates, fares, charges, classifications, regulations and practices prescribed by laws of the State or by agencies of the State, and that the charters, so conditioned, were accepted by the corporations and are now contracts and binding upon such corporations and their successors.

In Paragraph XI it is alleged: That, with one exception, the Gulf, Colorado & Santa Fe Railway Company, which owns a small amount of mileage in Oklahoma, the State of Texas has confined the corporate powers of railway corporations chartered by it within the limits of the State; that the State has prohibited any corporation, except one chartered by it or by the United States, from owning or operating any railroad in Texas, and that no railroad corporation, except the Texas & Pacific Railway Company, operates in Texas under a United States charter.

In Paragraph XII it is alleged: That bonds in the aggregate amount of approximately $358,382,410 have been issued by railroad corporations chartered by Texas, upon condition that the corporations shall operate their lines of railroad in accordance with the laws of the State and be governed by the lawful rates, fares, charges, classifications, regulations and practices prescribed by the State, and that the State has not consented to the abrogation of such obligation.

In Paragraph XIII it is alleged: That within the State of Texas the constitution and statutes of the State are applicable to the line of railroad operated by the Texas & Pacific Railway Company; that all the railroad corporations of the State are bound to observe the rates, fares and charges of the State, and that the State has never consented to the abrogation of this obligation.

In Paragraph XIV it is alleged: That the State of Texas is not asking the court to determine whether the charter contracts referred to exist; that allegations concerning such contracts are made simply to show that the power and authority attempted to be conferred on the Commission to determine and fix rates, fares and charges for intrastate commerce within the State of Texas, to determine when railway corporations within the State may cease operation, and take up and abandon their lines of railway, or construct additional lines of railway, or issue stocks, bonds and securities, or form pools and combinations, or consolidations, can not constitutionally be conferred upon the Commission, and that the provisions of the transportation act which purport to confer such authority are unconstitutional.

In Paragraph XV it is alleged: That the Government of the United States and the Congress, and the Commission, have no authority to determine a justiciable question where the rights of a State are involved; that such a question can be determined only by the Supreme Court of the United States; that no citizen of the State of Texas or of any other State, and no corporation of any kind or character, can bring an action against the State of Texas, or against those acting for it as public officers, in any court, or before the Commission, without the consent of the State of Texas; that such consent has not been given, and that subdivisions 18 to 22, inclusive, of section 402 of the transportation act, which purport to confer certain authority upon the Com-

mission, including authority to determine justiciable questions like the one above mentioned, and to confer certain authority upon railroad corporations of the State of Texas, are unconstitutional.

In Paragraph XVI it is alleged: That section 407 of the transportation act, particularly paragraph 1, and subdivisions 4, 5, 6 and 8, which purport to confer certain authority upon the Commission, and upon railroad corporations of Texas, in connection with contracts, agreements, combination and consolidations, in derogation of the constitution and laws of the State is unconstitutional.

In Paragraph XVII it is alleged: That section 439 of the transportation act, which purports to confer upon the Commission control over the issuance of stocks, bonds and other securities, and over the assumption of liability as lessor, lessee, guarantor, indorser, surety or otherwise, by railroad corporations of Texas, in derogation of the Constitution and laws of the State, is inconstitutional. Complaint is made in particular that said Act violates Sec. I, Art.I, and Sub. 18, Sec. 8, Art. I, of the Constitution in that legislative power is delegated by Congress to the Interstate Commerce Commission; That it violates the due process clause of the Fifth Amendment; That it authorizes officers of one railroad to serve as officers of a competing road in violation of the laws of Texas, passed in pursuance of its power reserved to it under the Tenth Amendment to the Constitution of the United States; and also by Sub. 3, Sec. 8, Art. I, U. S. Constitution.

In Paragraph XVII it is alleged: That the State of Texas possesses certain natural advantages in climate, topography and building materials which have enabled the railroads to construct and maintain their lines at a substantially smaller cost than in the other sections of the territory included in the "Western Group" with which it has been placed for

classification and rate making; The value per mile, of each road, is tabulated and attached as Exhibit No. I;

The right of the State to fix rates, fares and charges in proportion to the value of investments, which right is guaranteed to it under the Constitution but which has been abrogated by Section 422 of the Act complained of; That a complete analysis of said Section, which is therein fully set out, renders it violative (a) of the Tenth Amendment to the Constitution in that the reserve powers of the State are usurped; (b) of the various sections, and each section which recognizes the State as a governmental unit for commerce, taxation and duties, and prohibits the formation of new States within the jurisdiction of another State or by the junction of two or more States, (c) of the Fifth Amendment in that it authorizes charging rates and fares to bring an income in proportion to the value of the average for the group of States instead of for the State; (d) of Sub. 3, Sec. 2, Art. 1 and Sub. 4, Sec. 9, Art 1, of the Constitution, forbidding the levy and collection of taxes except in proportion to the population of the States, and of Sub. 1, Sec. 8, Art. 1, which says that duties, imposts and excises shall be uniform throughout the United States; (e) of each of said provisions of the Constitution above stated in that one-half of all profit a road may make in excess of 6% of its value shall go to the public treasury, this being nothing more than a direct tax; (f) of the Fifth Amendment in that subdivision 17 provides that if any particular rate may reflect a proportion of excess income to be paid by the carrier into the public treasury, yet, the shipper shall not be entitled to recover the same, nor be entitled to reparation therefor; (g) of the Fifth Amendment, in that the carrier is permitted to retain one-half of all excess over 6% on its investment, that amount being found by the act to be a just and reasonable income; (h)

of Sub. 3, Sec. 8, Art. 1, of the Constitution, in that specified sections of the Act permit the use of public funds for other than Governmental purposes.

In Paragraph XIX it is alleged: That the several Acts which the Interstate Commerce Commission is authorized to perform relative to fixing and prescribing rates within the State violate the provision of the Constitution reserving such powers to the State and the principles of rate making therein provided for are contrary to sanctioned principles which permit the Government to prescribe rates within a State; that the effect, if any, sought to be removed from interstate commerce is too remote to be within the power of the general Government. That in effect the procedure prescribed is that of a suit before the Interstate Commerce Commission as a court against the States, contrary to their guaranteed rights to be immune from suit by private individuals except by its own consent. That the several provisions are so vague, indefinite and uncertain that it amounts to authority by Congress for the Interstate Commerce Commission to enact the law, a power it cannot delegate.

In Section XX of the Bill (page 48) it is alleged: That Sections 300 to 316, inclusive of the Transportation Act of 1920, provide for the creation of a Railroad Labor Board" and "Boards of Labor Adjustment." These will be referred to as the "Labor Board" and "Adjustment Boards." The powers of each board are set out and the Act creating them is attached as "Exhibit No. 14," at pages 152 to 159 of the Bill. The manner and power of appointment, the restrictions of appointees to certain classes not determined by qualifications, experience, or fitness but only by the membership in a class or organization of society, the composition of the board as a corporate entity, arm of the Government, composed of representatives of classes or organizations which the Act recognizes as in opposition to

the public and public interest and the appointment, designation and payment of salary to such persons while representing such class or organization as opposed to the Government, are each and all complained of as being in excess of the powers granted to the Congress under the Constitution, and particularly in violation of the sections pointed out in the pleadings. Complaint is also made of the powers given to the board and the punishment it may assess for failure to comply with its findings or requirements. Said sections particularly violate the Tenth Amendment to the Constitution of the United States in that certain powers reserved to the States are lodged in the "Adjustment Boards" and "Labor Board." Among the powers so complained of are the powers to prosecute and enforce contracts between employer and employee and to form combinations and conspiracies in restraint of trade in violation of the Constitution and laws of Texas, adopted and passed in pursuance of its right under the Constitution of the United States. Said Boards are given judicial authority in violation of Subdivision 9, Section 8 of Article 1 of the Constitution of the United States and the members are not required to take the oath prescribed in Subdivision 3, of Article 6 of the Constitution of the United States.

It is further complained that the penalty affixed is in violation of the Fourth and Eighth Amendments to the Constitution of the United States.

Paragraph XXI concludes the Bill and is the prayer for relief against both parties defendant from either enforcing the unconstitutional statutes or from further promulgating and enforcing the arbitrary rules and regulations to the injury of complainant.

ISSUES OF FACT:

Allegation is made that the Interstate Commerce Commission is a corporate body having capacity to sue and be

sued and has regulatory powers over carriers in the United States engaged in interstate commerce. Allegation is also made that the Railroad Labor Board is a corporate body vested with administrative and regulatory governmental powers, established and existing under an Act of Congress approved February 28, 1920, (41 S. L. 469, Sec. 300 to 316).

It is alleged that Texas has approximately 265,000 square miles of territory and great natural resources, much of which are undeveloped, a population of more than 4,600,000 people, a total railroad mileage of about 16,000 miles, and operated by approximately 125 companies, which, with one exception, are incorporated under the laws of the State of Texas, and which, with one exception are confined in their operation to the State of Texas. The mileage and valuation of each road is pleaded and fully set out in exhibit No. 1. It is also alleged that the State has granted all charters with the express provision that all laws of the State relative thereto be accepted as a part of the charter and become a binding obligation between the State and such carrier. As a consideration for all of the obligations so assumed by the carriers, the State extended its police powers, right of eminent domain, granted rights of way over its public highways, streams over 30 feet in width, all of which are owned by the State, and in enumerated instances conveyed to such carriers large and valuable acreage, of the public domain, amounting in all to about 35,768,718 acres, (Exhibit No. 6, page 129 of the Bill) for which the carriers under express contract agree to obey the laws of the State and comply fully with the terms of their charter. That the State of Texas has not consented to the abrogation of such contracts. It is specifically stated, however, (Sec. XIV, page 18) that such contracts are not pleaded for the purpose of invoking the jurisdiction of this court at this time to determine whether or not such facts do constitute contracts, or

whether or not such contracts exist, but for the purpose of showing that the powers attempted to be given the Interstate Commerce Commission conflict with the rights and powers of the State in such way as to present questions for judicial ascertainment, and, therefore, violate the judicial clause of the Constitution and the due process clause of the Fifth Amendment to the Constitution.

It is alleged that the topography of the State and its natural resources have vied in permitting economical construction and maintenance of the railroads and the regulations of the Railroad Commission have secured the use and benefit of such natural advantages, and has caused the roads of the State to be, in the main, economically and properly constructed, and has continued to procure and secure proper and adequate maintenance. That the average valuation per mile of the railroads in Texas is materially less than the average valuation of such property throughout the United States, or throughout the group or district in which it has been placed for regulation by the Interstate Commerce Commission.

The action of the Interstate Commerce Commission in: Ex parte 74, in the matter of applications of carriers for increased rates, as reported in 58 I. C. C. page 220; No. 11,764 in the matter of Intrastate rates within the State of Texas, reported in 60 I. C. C. page 421; and other orders affecting intrastate rates and regulations, are alleged as acts violative of the State's rights and it is asked that the Interstate Commerce Commission be enjoined from enforcing such orders and exercising authority as thereby exercised and claimed.

Other acts of the defendant Commission complained of, for which similar relief is sought, are enumerated, among which are the following:

That said defendant has issued certificates of convenience and necessity authorizing carriers whose property is

situated wholly within the State, to abandon operation and to dismantle and remove the tracks, contrary to the laws of the State of Texas;

That said defendant has refused to grant certificates of convenience and necessity for the construction of roads wholly within the State, and to advertise and charge rates and fares and to receive passengers and freight from connecting carriers, after such companies had complied with all laws and requirements of the State;

That said defendant is exercising and attempting to exercise, power and authority in the regulation of the issuance, sale and ownership of stocks, bonds, and securities of railroads of the State of Texas, after such carriers have complied with the laws of the State of Texas relative thereto;

And that said defendant is making rates, fares and charges, issuing orders, rules, regulations and schedules and compelling the railroads to comply therewith; and, has placed the State of Texas in what is designated the "Western Freight Group," and has and will authorize and require the railroads of the State to charge and collect fares, rates and charges, based upon the valuation of all roads in the group and contrary to the laws of the State of Texas;

That said defendant intends and will, if not restrained, authorize the creation and operation of trusts, combinations and monopolies among railroads in Texas, contrary to the Constitution and laws of the State; and,

That the State of Texas has been, is now being, and will be made party to actions involving the rights, powers, privileges, sovereignty, and property of the State before the Interstate Commerce Commission.

As to the Labor Board and the Adjustment Boards, it is alleged that their action in fixing wages and salaries, establishing working conditions, practices and regulations

of the various employees of the railroads of the State have caused enormous increase in the operating expense; and such orders have resulted in unnecessary employment, unreasonable and unjust wages to many of the employees of the railroads of the State of Texas; That such salaries and wages are out of proportion to wages paid for like services in other and similar positions and employment, paid and received by the people of the State of Texas; and is an unjust and unreasonable demand upon the railroads of the State, resulting in the necessity for an increased operating income;

That, because of such actions of the Labor Board, the Interstate Commerce Commission has fixed unjust and unreasonable charges, rates and fares, all of which have caused and are causing great loss to the producers and shippers of freight in the State of Texas, a great diminution of freight and passenger traffic to the railroads and have caused and are causing great financial loss to the people of the State of Texas, producers, shippers and carriers alike.

These and all other facts alleged are admitted by both the defendants to be true.

QUESTIONS OF LAW:

A. B. C.

The Bill raises the often considered question of how far Congress may go in the regulation of interstate commerce but the questions presented are different to those heretofore considered, are questions, in many instances, of first impression, for the reason Congress has never heretofore asserted its power over intrastate Commerce except when interstate commerce was directly and substantially involved. The various sections of the Act involved in this cause ignore any rights of the State to control its internal commerce, apparently upon the theory that no such thing or right

exists. The most that can be said is that interstate commerce is very remotely involved and that only theoretically and not actually. The legislation complained of relieves interstate commerce of no actual burden, gives it no substantial relief from existing conditions, but is purely experimental. Yet, at the same time the power of the States to regulate their internal commerce has been by the Act annihilated. The questions of law thus complained of will be treated minutely in the argument to follow.

ARGUMENT

The writer of this brief feels the strongest possible argument which can be presented in behalf of Complainant's contentions may be found in the bill itself, tersely stated in the language of the late Attorney General of Texas, now Chief Justice of the Supreme Court of the State. For that reason the various complaints raised in the bill are herein referred to and adopted as a part of the brief and the court is respectfully urged to consider the bill not alone to determine the issues raised, but for the proper interpretation of the laws complained of therein.

This action is to restrain the Interstate Commerce Commission and the Railroad Labor Board from performing certain Acts and to declare unconstitutional, null and void the Acts of Congress under which they claim authority to act, and thus to nullify orders heretofore made in pursuance thereof. Under the pleadings relief may be granted as to any illegal act of either defendant regardless of the court's holding as to any other. We respectfully request that this be done.

Section I.

In this section we shall treat only of that part of the complaint relating to the Interstate Commerce Commission. We shall divide this argument into three sections, the first

relating to the rate making power, second, powers to order abandonments and extensions, and third, power to regulate issuance of stocks, bonds and securities:

Rate Making Power:

In the frequently quoted Shreveport Rate cases a new principle was established or, at least finally settled. Recognizing the limitations placed upon the authority of the Commission to interfere with State rates only for the purpose of removing actual, unjust and unreasonable discriminations against interstate commerce, Congress has attempted to broaden such powers, if we are to accept the interpretation which the Interstate Commerce Commission has placed upon the Act, but which we do not accept, and to create a condition which can be for no other purpose than to force the internal commerce of the several States to assume the burden of producing a given amount to support the carriers engaged in both intrastate and interstate commerce. This obligation is decreed to be discharged jointly between the two and the State has no option of discharging this burden by furnishing a greater tonnage of freight and a greater number of passengers or of relieving its carriers of any burdensome regulations, taxes or other expense, or all of these. But, regardless of tonnage, operating expense, original investment of the carrier within the State or any other factor in determining a reasonable net corporate income for the carrier involved, a sum is set to be raised from all traffic within a group of States and each State is arbitrarily required to fix a *rate* equal to the rate fixed for interstate commerce in order to realize a net corporate income in the aggregate equal to 5½% plus ½% of the total estimated value of all carriers' property within the group of States. Net income, yes, even gross income, as well as percentage of income, are all ignored. The *rate* is

made the basis regardless of right or reason. It is purely arbitrary. The facts pleaded and admitted in this case are to the effect that the railroads are more economically constructed and maintained than the average value placed upon all roads in the group. The difference is substantial. It follows that the people of Texas are paying more than their just proportion of the net income found to be reasonable, and allowed. All balance over such allowed income is divided, one-half going to the carrier and the other half going to the Federal treasury. Two objections are raised to this and we submit both are well founded. First, such fifty per cent of excess, is that much more to the carrier than it has been found it is entitled to receive. No power lies in Congress to collect from the people more than a reasonable income for the investment. Second, a tax is here collected from the people of the State contrary to taxing power under the Constitution of the United States. Paragraph 4, Section IX, of Article I, of the Constitution.

The carriers have filed a brief in the "Wisconsin Case" in which they delve into the history of the time for a proper interpretation of the Constitution. That brief is now before the court and will be considered in connection with this case. Counsel should be permitted to do this and we call the court's attention to a few pages in history having a direct effect on our Constitution in the matter of taxation. We were forming a government to take a place of power in the world. Many empires had been built and successively crumbled. Not a powerful nation had fallen in historic time so long as there was no internal dissension. Two problems had been paramount in all governments and from the beginning of time had baffled the talents of wisest statesmanship. These problems were taxation and transportation. No solution had then been found and the Act before us will fall far short of the mark if upheld.

But the framers of our Constitution gave greatest consideration to the question of taxation. *Any direct tax not based on population was prohibited.* There was a reason for this and to this Counsel will agree, not a more positive inhibition in the Constitution than this yet the Act lays such a burden—our carriers, even the States' own intrastate commerce, disregarding population, or representation, must bear it.

The State of Texas has prescribed rates, fares and charges which its roads are obligated under their charters to respect. They still operate under the charters, claiming and exercising the rights, privileges and immunities thereof. So long as a railroad operates under its charter it must comply with its terms (Missouri Pacific vs. Kansas, 216 U. S., page 262).

In connection with this phase of our argument we call attention to the briefs of parties appellants and amici curiæ in No. 206, Railroad Commission of Wisconsin, et al vs. Chicago, Burlington & Quincy Railroad Company, now before the court for consideration, and adopt same, together with argument therein as the support for views and reasoning herein.

Right to Order Abandonments and Extensions:

Congress can invest the Interstate Commerce Commission with no judicial powers. We consider this primary and offer no argument.

The questions here involved as to the power to order abandonments are thoroughly and tersely set forth in appellant's brief in No. 298, State of Texas vs. Eastern Texas Railroad Company, which is before the court. We refer to it and give no further discussion of the question, except as to extensions.

In the brief above referred to it is considered for the purpose of argument only that Congress may have power to order extensions. We now assert it has no such power in the manner it has attempted to exercise it. There is always available to the carrier, its stockholders and lien holders, for all of whom the State is sponsor, the plea that their property cannot be taken without due process of law nor for public use without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution. In fact this is the first subject for consideration. It is clearly a matter for judicial ascertainment, a thing the Interstate Commerce Commission cannot do. If Congress can find impediments in the way of commerce which it may remove by extensions of lines, it must, nevertheless, comply with the Constitution and provide not only just compensation for the property taken, either in guaranteeing returns on the investment, or reducing the carriers' investment by payment of a portion so it can reasonably make such return, but it must provide for a proper adjudication of the questions involved by a tribunal which it can constitutionally clothe with such authority.

Regulation of Stocks, Bonds and Securities

This brings us to the consideration of a subject the value of which in the regulation of interstate commerce is most fanciful. No imagination of the human mind can conceive and certainly no facts exist which warranted Congress in its conclusion that the States have, or will, in the proper exercise of their police powers in the regulations of the issuance, sale and ownership of stocks, bonds and securities, place any burdens upon or in any manner embarrass interstate commerce. Here the interests of intrastate and interstate commerce go hand in hand. There can be no clashing of interests. The State is in far better

position to expeditiously exercise this control than the general Government. Heretofore it has been entrusted to them and the decisions of this court have repeatedly proclaimed such as powers of the States under the Constitution. (L. & N. Ry. vs. Ky., 161 U. C. 677, 702 and Northern Sec. Co. vs. U. S., 193 U. S. 347.) No abuse of such power seems to have actuated and prompted the legislation. If such abuse of the State's police powers should occur, the State would, nevertheless, be entitled to its day in court and to have its rights in each case judicially determined under such procedure as Congress may under the Constitution provide. This it has not done. The regulation of stocks, bonds and securities of a corporation is a necessary incident to its creation. The Constitution has reserved to the States the power to create corporations, Congress has no right, either by direct legislation or by circumscription to destroy such power.

In view of the line of decisions by this court from which those above referred to are taken, it seems to us that this provision of the Act complained of is clearly unconstitutional and that the Interstate Commerce Commission should be restrained in accordance with Complainant's prayer.

Section II

The Railroad Labor Board:

The Railroad Labor Board's Act presents to us the most foreign, most socialistic, most feudalistic, most unauthorized and most pernicious matter ever emitting from our legislative mill. It is so foreign to any plan or characteristic of our Government that we hesitate to launch an attack upon it within the general rule of reason heretofore appealing to this court. Yet we are confronted with it as an usurpation of the rights of the people under the guise of

Constitutional legislation, clothed in the cloak of judicial sanction in name only by reason of the opinion in Wilson, et al vs. New, et al, 243 U. S. 332.

It shall be our purpose to show first of all, that the case above referred to does not sustain the act under consideration. Having all the objectionable features of the former act, it goes a great deal further. The one was called forth to meet an emergency and save the commerce of the country, and for that reason was held valid. The other came forth to create emergencies and hamper the commerce of the country in the interest of a class or classes. This has been its history from the beginning and the admitted facts in this case are not exceptions but the inevitable results of its application. Neither the admitted facts heretofore stated nor the attacks upon its constitutionality heretofore enumerated need be repeated. The loss to the producers, shippers and carriers stated in the bill is a loss to interstate commerce which it was the duty of Congress to prevent and not to entail. Such losses are the direct results of the Act: its benefits to commerce have not been discovered and we are unable to conceive them yet.

The Act is embraced in Sections 300 to 316, Transportation Act, 1920, S. L. 41, 469. Conceding, as we must, that Congress has the power to regulate the wages of employees when necessary to do so for the interest of commerce, it by no means follows that it can arbitrarily ro so and in the manner it has attempted. Where legal rights exist in parties at interest they must be adjudicated by a court of competent jurisdiction. When penalties are prescribed, they must be fixed and certain. Here, we are constrained to remark, parenthetically, that the disposition of Congress manifest in the entire Act complained of in the bill to ignore if not to usurp the functions of the Judicial branch of

our Government, deserves the condemnation within the power of this Court to give.

As authority for our contention that the Act violates the due process clause and private property clause of the Fifth Amendment we refer to:

Dartmouth College Case, 4 Wheat. 518.
Chicago, B. & Q. R. R. Co. vs. Chicago, 166 U. S. 226.
McGehee on Due Process of Law, p. 30.
Monongahela Navigation Co. vs. U. S. 148 U. S. 312-36.
United States vs. Lynch, 188 U. S. 445.
Adair vs. United States, 208 U. S. 161, 180.
United States vs. Cress, 243 U. S. 316.

The features of the Act which render it obnoxious and work a departure from any legislation heretofore sanctioned by Federal or State authority are the methods of appointment of members of the board and the punishment it may mete to those who fail or refuse to follow its "findings."

Paragraph 2 of Section II, or Article II, of our Constitution provides for the appointment of all officers by the President "by and with the advice and consent of the Senate," power being given to Congress to provide by law for the appointment of "such inferior officers as they may think proper in the President alone, in the courts of law and in the heads of departments." So inclusive are the words of this paragraph as to make it equally as exclusive. Certainly Congress has no power to broaden the appointive powers above granted. Has it done so? The board consists of nine members to be selected from three classes, not qualifications, to wit: employees, employers and the public. True the Act places the appointment in the President "by and with the advice and consent of the Senate," but, as to the first two sections, both the President and Senate are restricted, advised and must yield to the wishes, demands and limitations of the two classes, and make, in

each instance, the appointment from the six whose names are presented in such manner as the Interstate Commerce Commission may prescribe. No authority can share in the appointing power except as provided by the Constitution.

French vs. State, 29 L. R. A., 113. (Ind.)
Overshiner vs. State, 51 L. R. A., 748 (Ind.)
State ex rel. Crow vs. Towns, 54 S. W. 552. (Mo.)
Bridges vs. Sheleross, 6 W. Va. 562.
Harvey vs. State, 21 N. E. 890. (Ind.)
Ex parte Lucas, 61 S. W. 218 (Mo.)

The board, when organized, is a body corporate, an agency of the Government, one of its component parts. They receive and docket petitions as a court, administers oaths, hear testimony, make findings of fact, reach conclusions of law and issue and record judgments and decrees. They fix punishment—the penalty being to publish the fact that any party has failed or refused to obey its edicts, thus holding such party up before the patronizing public as in contempt in such manner as they may choose. The effect of this cannot be computed. It is cruel, indefinite and violates the Fourth, Fifth and Eighth Amendments to the Constitution.

In Re: Birdsong, 39 Fed. 599.
Stoutenburgh vs. Frazier, 48 L. R. A. 220.
Cooley (7th Edition) on Excessive Fines and Cruel and Unusual Punishments, page 471. (473-N1)

We assume there will be no contention upon the part of defendant that the members of the board are not officers under the contemplation of the Constitution. It occurs to us this could not be questioned by any line of authorities, however, we submit the following authorities:

Guthrie Daily Leader vs. Cameron, 41 Pac. 635.
Hendricks vs. State, 49 S. W. 705.
15 Amer. Digest, page 689 (A) 1.
37 Cent. Digest: Officers, page 1816 (A) 1 and 4.

CONCLUSION

Complainant has power to sue and the court has jurisdiction of actions brought by it. More than one question has been properly pleaded as to each defendant upon which this Court should render judgment. The facts pleaded as to the abuse of power by each defendant warrants the Court in restraining such acts regardless of the validity of the law under which they pretend to act.

We submit both motions should be denied and plaintiff's bill sustained.

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Washington, D. C., December 3, 1921.

*Since this brief has been in course of preparation C. M. Cureton has been appointed Chief Justice of the Supreme Court of the State, and W. A. Keeling has succeeded him as Attorney General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1921.

STATE OF TEXAS, COMPLAINANT,

v.

THE INTERSTATE COMMERCE COMMISSION AND THE RAILROAD LABOR BOARD, DEFENDANTS.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

P. J. FARRELL,
For Interstate Commerce Commission, Defendant.

OCTOBER, 1921.

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SUBJECT INDEX.

	Page.
STATEMENT	1–10
ARGUMENT:	
The bill of complaint does not present for determination a case or controversy within the original jurisdiction of the court	10–19
There is no equity in the bill of complaint	19–51

TABLE OF CASES CITED.

Arkansas Case, 59 I. C. C. 471	11, 14
Baltimore & Ohio Railroad Co. v. *Interstate Commerce Commission*, 221 U. S. 612	50
Brown v. *Maryland*, 12 Wheat. 419	49
Brown and Gritts v. *United States*, 219 U. S. 346	14
California v. *San Pablo Railroad*, 149 U. S. 308	19
Daniel Ball, The, 10 Wall. 557	49
Ex parte, 74, 58 I. C. C. 220	12
Gibbons v. *Ogden*, 9 Wheat. 1	49
Houston East & West Texas Railway Co. v. *United States*, 234 U. S. 342	48
Illinois Case, 59 I. C. C. 350	11, 14
Illinois Central Railroad Co. v. *Behrens*, 233 U. S. 473	50
Indiana Case, 60 I. C. C. 337	11, 14
Interstate Commerce Commission v. *Delaware, L. & W. R. Co.*, 220 U. S. 235	45
Interstate Commerce Commission v. *Goodrich Transit Co.*, 224 U. S. 194	50
Little v. *Bowers*, 134 U. S. 547	19
Louisiana Case, 60 I. C. C. 467	11, 14
McCulloch v. *Maryland*, 4 Wheat. 316	51
Michigan Case, 60 I. C. C. 245	11, 14
Minnesota Case, 59 I. C. C. 502	11, 14
Minnesota Rate Cases, 230 U. S. 352	49, 50
Missouri, Kansas & Texas Ry. v. *Cade*, 233 U. S. 642	19

	Page.
Mobile, County of, v. *Kimball,* 102 U. S. 691	49
Muskrat v. *United States,* 219 U. S. 346	14
Nebraska Case, 60 I. C. C. 305	11, 14
New York Case, 59 I. C. C. 290	11, 14
Proctor & Gamble Company v. *United States, Interstate Commerce Commission, et al.,* 225 U. S. 282	45
Richardson v. *McChesney,* 218 U. S. 487	19
Second Employers' Liability Cases, 223 U. S. 1	49, 50
Smith v. *Alabama,* 124 U. S. 45 (465)	49
Southern Railway Company v. *United States,* 222 U. S. 20	50
State of Oklahoma v. *A., T. & S. F. Ry. Co.,* 220 U. S. 277	19
State of Oklahoma v. *G., C. & S. F. Ry. Co.,* 220 U. S. 290	19
Stearns v. *Wood,* 236 U. S. 75	18
Texas Case, 60 I. C. C. 421	11, 14
United States v. *Louisville & Nashville Railroad Company,* 235 U. S. 314	46
Wisconsin Case, 59 I. C. C. 391	11, 14

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

STATE OF TEXAS, COMPLAINANT, v. THE INTERSTATE COMMERCE COMMISSION and the Railroad Labor Board, defendants.	Original No. 24. In Equity.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

STATEMENT.

The State of Texas, by its Attorney General, asks the court to declare to be invalid, unconstitutional, and void certain amendments to the interstate commerce act, contained in the transportation act, 1920. That is the extent to which this suit affects this defendant, the Interstate Commerce Commission, which for convenience will be called hereinafter the Commission. The Commission filed a motion to dismiss the bill of complaint, the effect of which is to admit for the purposes of the motion the allegations which are well pleaded. We therefore summarize pertinent paragraphs of the bill as follows:

In Paragraphs I, II, and III the parties and the subject matters over which they exercise jurisdiction are described.

In Paragraph IV it is alleged: That all railway corporations which own and operate lines of railway in the State of Texas are incorporated and chartered under the laws of the State, except the Texas & Pacific Railway Company, which is chartered under the laws of the United States.

In Paragraph V it is alleged: That in 1845 Texas was admitted into the Union; that it has since been continuously a State of the United States, and that it was so admitted on an equality with other States in all respects whatsoever, except that it retained the ownership of, and ever thereafter continued to own, all public lands within its borders.

In Paragraph VI it is alleged: That, in the Constitution of the United States, no power of police or legislation with respect to the internal affairs and intrastate commerce of Texas is delegated to the National Government.

In Paragraph VII it is alleged: That among the powers reserved to the States are, the right to regulate intrastate commerce, and all rates, fares, wages, charges, and contracts relative thereto entered into or made effective within any State, and the right to regulate private corporations, and combinations and restrictions in trade and commerce in intrastate commerce.

In Paragraph VIII it is alleged: That, under its several constitutions and various statutes, the State of Texas has exercised the powers reserved to it as aforesaid, and that its constitution contains provisions as stated in this paragraph.

In Paragraph IX it is alleged: That, under its constitution, the State of Texas has enacted a full and complete code of laws relating to railroads and common carriers, corporations, trusts and monopolies, and that said laws contain provisions as stated in this paragraph.

In Paragraph X it is alleged: That the State of Texas has granted to various railroad corporations of that State approximately 24,454,713 acres of land, upon condition that they comply with the terms of their charters, including laws applicable to rates, fares, charges, classifications, regulations and practices prescribed by laws of the State or by agencies of the State, and that the charters, so conditioned, were accepted by the corporations and are now contracts and binding upon such corporations and their successors.

In Paragraph XI it is alleged: That, with one exception, the Gulf, Colorado & Santa Fe Railway Company, which owns a small amount of mileage in Oklahoma, the State of Texas has confined the corporate powers of railway corporations chartered by it within the limits of the State; that the State has prohibited any corporation, except one chartered by it or by the United States, from owning or operating any railroad in Texas, and that no railroad corporation, except the Texas & Pacific Railway Company, operates in Texas under a United States charter.

In Paragraph XII it is alleged: That bonds in the aggregate amount of approximately $358,382,410 have been issued by railroad corporations chartered

by Texas, upon condition that the corporations shall operate their lines of railroad in accordance with the laws of the State and be governed by the lawful rates, fares, charges, classifications, regulations and practices prescribed by the State, and that the State has not consented to the abrogation of such obligation.

In Paragraph XIII it is alleged: That within the State of Texas the constitution and statutes of the State are applicable to the line of railroad operated by the Texas & Pacific Railway Company; that all the railroad corporations of the State are bound to observe the rates, fares and charges of the State, and that the State has never consented to the abrogation of this obligation.

In Paragraph XIV it is alleged: That the State of Texas is not asking the court to determine whether the charter contracts referred to exist; that allegations concerning such contracts are made simply to show that the power and authority attempted to be conferred on the Commission to determine and fix rates, fares and charges for intrastate commerce within the State of Texas, to determine when railway corporations within the State may cease operation, and take up and abandon their lines of railway, or construct additional lines of railway, or issue stocks, bonds and securities, or form pools and combinations, or consolidations, can not constitutionally be conferred upon the Commission, and that the provisions of the transportation act which purport to confer such authority are unconstitutional.

In Paragraph XV it is alleged: That the Government of the United States and the Congress, and the Commission, have no authority to determine a justiciable question where the rights of a State are involved; that such a question can be determined only by the Supreme Court of the United States; that no citizen of the State of Texas or of any other State, and no corporation of any kind or character, can bring an action against the State of Texas, or against those acting for it as public officers, in any court, or before the Commission, without the consent of the State of Texas; that such consent has not been given, and that subdivisions 18 to 22, inclusive, of section 402 of the transportation act, which purport to confer certain authority upon the Commission, including authority to determine justiciable questions like the one above mentioned, and to confer certain authority upon railroad corporations of the State of Texas, are unconstitutional.

In Paragraph XVI it is alleged: That section 407 of the transportation act, particularly paragraph 1, and subdivisions 4, 5, 6 and 8, which purport to confer certain authority upon the Commission, and upon railroad corporations of Texas, in connection with contracts, agreements, combination and consolidations, in derogation of the constitution and laws of the State, is unconstitutional.

In Paragraph XVII it is alleged: That section 439 of the transportation act, which purports to confer upon the Commission control over the issuance of stocks, bonds and other securities, and over the as-

sumption of liability as lessor, lessee, guarantor, indorser, surety, or otherwise, by railroad corporations of Texas, in derogation of the constitution and laws of the State, is unconstitutional.

In Paragraph XVIII it is alleged: That section 422 of the transportation act, which, among other things, purports to authorize and require the Commission to initiate, modify, establish or adjust rates, fares, charges, classifications, regulations and practices so that carriers as a whole, or as a whole in each of such rate groups or territories as the Commission may from time to time designate, will earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation, is unconstitutional.

In Paragraph XIX it is alleged: That section 416 of the transportation act, which, among other things authorizes and requires the Commission, after full hearing in the premises, to prescribe intrastate rates, fares, charges, classifications, regulations and practices, to remove undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and section 418 of the transportation act, which, among other things, authorizes the Commission, after full hearing in the premises to deter-

mine and prescribe just and reasonable individual or joint rates, fares, charges, classifications, regulations and practices, to take the place of rates, fares, charges, classifications, regulations or practices found by the Commission to be unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of the interstate commerce act, are unconstitutional.

As a matter of substance, Paragraph XX contains allegations relating only to the Railroad Labor Board.

In Paragraph XXI, in so far as it relates to action of the Commission, it is alleged: That, under authority and direction of the transportation act, the Commission has fixed fares and charges for the transportation of passengers and freight which are unjust and unreasonable, and which cause and have caused great loss to the producers and shippers of the State of Texas, and great diminution of freight and passenger traffic to the railroads of the State, and cause and have caused great financial loss to the people of the State; that the Commission has granted certificates of convenience and necessity to railroads within the State authorizing and directing them to cease operation of trains and to dismantle their railroads and dispose of their physical property contrary to the constitution and laws of the State, and in disregard of their contract obligations to the people of the State; that the Commission has refused to grant certificates of convenience and necessity and to permit railroads within the State to advertise and charge

fares and freight rates and to receive passengers and freight from connecting carriers and transport same in accordance with the laws of the State, and has refused to permit the construction of railways within the State by persons and corporations who have complied with the constitution and laws of the State regulating the chartering, organization, construction and maintenance of railways wholly within the State; that the Commission is attempting to supervise and regulate the issuance of bonds, certificates and other securities by the railroads of the State, which were issued in accordance with the constitution and laws of the State; that as a consequence the railroads and people of the State are compelled to submit to the demands and to conform to the rules and regulations of the Commission at an unnecessary expense and at great inconvenience, and that the result is a loss of property and the taking of their property without due process of law; that, contrary to the constitution and statutes of the State, and contrary to the Constitution of the United States, the Commission has issued an order placing the State of Texas within what is designated as the "western freight group," and has required and will continue to require the railroad companies of the State to charge and "control" rates, fares and charges contrary to the constitution and statutes of the State, contrary to the Constitution of the United States, and contrary to said contracts of the railroad companies; that as a consequence the State is and will be called upon to pay more than its just share upon property

within the State to supply the operating income demanded by the railroads of the United States; that the Commission intends to and will authorize the creation and operation of trusts, combinations and monopolies among railroads in the State, regardless of the constitution and statutes of the State, and thereby deprive the people of the State of their right to have competing carriers and freight competition, and that the State has been, is being, and will continue to be sued and made a party to suits involving the rights, powers, privileges, sovereignty, and property of the State, before the Commission, contrary to the constitution.

The last subdivision of Paragraph XXI reads as follows:

> Complainant further alleges that great and grievous injury and damage is resulting to it and its citizens by reason of the enactment of the act of Congress known as "the transportation act of 1920"; that it is shorn of large powers of sovereignty, viz, legislative, executive and judicial powers reserved to it by the Constitution of the United States, and it is deprived of privileges and immunities guaranteed to it as a sovereign under the Constitution of the United States, and that citizens situated in the boundaries of Texas and that its citizens and railroads are unauthorized to do and prohibited from doing acts and things otherwise legal and lawful except for the provisions of said act and the acts of the defendants herein.

There are attached to the bill of complaint, as exhibits, the above-mentioned provisions of the transportation act and of the interstate commerce act.

ARGUMENT.

I.

The bill of complaint does not present for determination a case or controversy within the original jurisdiction of the court.

It will be observed that in and by its bill the complainant, the State of Texas, does not place before the court facts sufficient to enable it to pass upon and determine any "case or controversy," within the judicial meaning of those terms. Instead, complainant calls attention to certain provisions of the transportation act on the one hand, and of the constitution and statute laws of the State of Texas on the other hand, sets forth reasons why, in its opinion, the former are in conflict with the latter and deprive complainant of its right to regulate, in the interests of its citizens, common-carrier railroad corporations and their business, in intrastate commerce, within the State of Texas, and asks the court to declare to be unconstitutional the provisions of the transportation act whose validity is thus challenged. In other words, the primary purpose, and, according to our understanding, the only purpose shown in complainant's bill is to obtain from the court, without presenting to it for determination any concrete case or controversy, an interpretation of a statute passed by Congress, providing for the regulation of

interstate and foreign commerce and common carriers therein engaged.

It is true that in the seventh subdivision of Paragraph XIX of its bill complainant calls attention to action taken by the Commission in *Ex parte 74*, wherein the Commission, for the purpose of complying with the mandate contained in section 15a of the interstate commerce act, authorized certain common carriers, subject to said act and to the jurisdiction of the Commission thereunder, to make certain increases in their rates, fares and charges for the transportation of passengers and property in interstate commerce, and also calls attention to action taken by the Commission in the Texas, Illinois, Nebraska, New York, Wisconsin, Arkansas, Minnesota, Indiana, Michigan and Louisiana cases, numbered respectively, 11764, 11703, 11829, 11623, 11763, 11775, 11776, 11894, 11762 and 11863, wherein the Commission required certain common carriers, subject to said act and to the jurisdiction of the Commission thereunder, to make certain increases in their rates, fares and charges for the transportation of passengers and property in intrastate commerce, for the purpose of removing undue and unreasonable advantage to and preference of persons and localities in intrastate commerce, undue and unreasonable prejudice to persons and localities in interstate commerce, and unjust discrimination against interstate commerce, found by the Commission to exist, but it is also true that, in and by its bill, complainant does not attempt to show that in

taking such action the Commission exceeded the power conferred upon it by said interstate commerce act.

In the Texas case mentioned the Commission, among other things, said:

> The record herein is silent as to interstate and intrastate commutation and other multiple forms of tickets, extra fares on limited trains, club-car charges, and rates for the transportation of milk and cream, and no findings are herein made with respect thereto.
>
> We are of opinion and find, subject to the reservations above noted, that the increases made by the respondents pursuant to our findings in *Ex parte 74* in the charges for freight service, including switching and incidental services, and for the transportation of passengers, including the surcharges on passengers in sleeping and parlor cars, and now in effect within the group herein considered, result in reasonable rates, fares, and charges for interstate transportation within that group, and that the failure of the respondents to increase correspondingly all of their rates, fares, and charges for intrastate traffic within the State of Texas has resulted and will result in intrastate rates, fares, and charges lower than the corresponding rates, fares, and charges contemporaneously maintained on interstate traffic within the State of Texas and between points in the State of Texas and points in other States within that group; in undue and unreasonable advantage to and preference of persons and localities in intrastate commerce within the State of Texas; in undue and un-

reasonable prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce.

We further find that said undue preference and prejudice and unjust discrimination can and should be removed by making increases in said intrastate rates, fares, and charges which shall correspond with the increases heretofore made by respondents as aforesaid and now in effect in their interstate rates, fares, and charges within that group.

We further find that, whether the aforesaid rates, fares, or charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Schedules filed in compliance with the order herein may be made effective upon not less than five days' notice.

The above findings are without prejudice to the right of the authorities of the State of Texas or any other interested party to apply in the proper manner for a modification of our findings or order with respect to any specified intrastate rate, fare, or charge on the ground that the latter is not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

And in the other State cases referred to the Commission made similar findings of fact and based the action taken by it therein upon said findings. In this connection the Commission calls the attention of

the court particularly to 60 I. C. C. 421, 426–427; 59 I. C. C. 350, 365–366; 60 I. C. C.305,313–314; 59 I. C. C. 290, 298–299; 59 I. C. C. 391, 396–397; 59 I. C. C. 471, 478–479; 59 I. C. C. 502, 506–507; 60 I. C. C. 337, 347–349; 60 I. C. C. 245, 248–249, and 60 I. C. C. 467, 474–475, 480.

Muskrat v. *United States* and *Brown and Gritts* v. *United States*, 219 U. S. 346, were cases instituted in the Court of Claims and taken by appeal to this court, in accordance with the authority conferred by an act of Congress of March 1, 1907, for the purpose of testing the constitutional validity of certain other acts of Congress. Pertinent portions of said act of March 1 were:

> That William Brown and Levi B. Gritts, on their own behalf and on behalf of all other Cherokee citizens, having like interests in the property allotted under the act of July first, nineteen hundred and two, entitled "An act to provide for the allotment of lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes," and David Muskrat and J. Henry Dick, on their own behalf, and on behalf of all Cherokee citizens enrolled as such for allotment as of September first, nineteen hundred and two, be, and they are hereby, authorized and empowered to institute their suits in the Court of Claims to determine the validity of any acts of Congress passed since the said act of July first, nineteen hundred and two, in so far as said acts or any of them attempt to increase or extend the restrictions upon alienation, encumbrance, or

the right to lease the allotments of lands of Cherokee citizens or to increase the number of persons entitled to share in the final distribution of land and funds of the Cherokees beyond those enrolled for allotment as of September first, nineteen hundred and two, and provided for in the said act of July first, nineteen hundred and two.

And jurisdiction is hereby conferred upon the Court of Claims, with the right of appeal, by either party, to the Supreme Court of the United States, to hear, determine, and adjudicate each of said suits.

The suits brought hereunder shall be brought on or before September first, nineteen hundred and seven, against the United States as a party defendant, and, for the speedy disposition of the questions involved, preference shall be given to the same by said courts, and by the Attorney General, who is hereby charged with the defense of said suits.

Upon the rendition of final judgment by the Court of Claims or the Supreme Court of the United States denying the validity of any portion of the said acts authorized to be brought into question, in either or both of said cases, the Court of Claims shall determine the amount to be paid the attorneys employed by the above-named parties in the prosecution thereof for services and expenses, and shall render judgment therefor, which shall be paid out of the funds in the United States Treasury belonging to the beneficiaries under the said act of July first, nineteen hundred and two. (Id. 350–351.)

And in ordering the petitions dismissed for want of jurisdiction this court, speaking through Mr. Justice Day, said:

> It is * * * evident that there is neither more nor less in this procedure than an attempt to provide for a judicial determination, final in this court, of the constitutional validity of an act of Congress. Is such a determination within the judicial power conferred by the Constitution, as the same has been interpreted and defined in the authoritative decisions to which we have referred? We think it is not. That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. The right to declare a law unconstitutional arises because an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the Government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a "case" or "controversy," to which, under the Constitution of the United States, the judicial power alone extends. It is true the United States is made

a defendant to this action, but it has no interest adverse to the claimants. The object is not to assert a property right as against the Government, or to demand compensation for alleged wrongs because of action upon its part. The whole purpose of the law is to determine the constitutional validity of this class of legislation, in a suit not arising between parties concerning a property right necessarily involved in the decision in question, but in a proceeding against the Government in its sovereign capacity, and concerning which the only judgment required is to settle the doubtful character of the legislation in question. Such judgment will not conclude private parties, when actual litigation brings to the court the question of the constitutionality of such legislation. In a legal sense the judgment could not be executed, and amounts in fact to no more than an expression of opinion upon the validity of the acts in question. Confining the jurisdiction of this court within the limitations conferred by the Constitution, which the court has hitherto been careful to observe, and whose boundaries it has refused to transcend, we think the Congress, in the act of March 1, 1907, exceeded the limitations of legislative authority, so far as it required of this court action not judicial in its nature within the meaning of the Constitution. * * * If such actions as are here attempted, to determine the validity of legislation, are sustained, the result will be that this court, instead of keeping within the limits of judicial power and deciding cases or controversies

> arising between opposing parties, as the Constitution intended it should, will be required to give opinions in the nature of advice concerning legislative action, a function never conferred upon it by the Constitution, and against the exercise of which this court has steadily set its face from the beginning. (Id. 361–362.)

Stearns v. *Wood*, 236 U. S. 75, was an appeal from a decree of the District Court of the United States for the Northern District of Ohio, dismissing the original bill because in it no cause of action was stated. In dismissing the appeal, this court, speaking through Mr. Justice McReynolds, said:

> The brief in behalf of appellant states that "this action is a test case brought by an officer of the National Guard against the adjutant general of Ohio, who are nominal complainant and respondent, and involves the construction of certain constitutional provisions, as follows:" Art. 1, sec. 8, par. 16; the second amendment; the tenth amendment; art. 1, sec. 8, par. 15; the preamble to the Constitution; the provision making the President Commander in Chief of the militia when called into the Federal service; the power granted to Congress to raise and support armies. "The action also seeks a construction with respect to the right of the President and Congress over the National Guard of the several States, and the status and legal relation of the officers thereof to the War Department; and raises the further question whether the National Guard or Organized

Militia may be used without the territorial limits of the United States, as such."

The general orders referred to in the bill do not directly violate or threaten interference with the personal rights of appellant—a major in the National Guard whose present rank remains undisturbed. He is not therefore in position to question their validity; and certainly he may not demand that we construe orders, acts of Congress, and the Constitution for the information of himself and others, notwithstanding their laudable feeling of deep interest in the general subject. The province of courts is to decide real controversies, not to discuss abstract propositions. *Little* v. *Bowers*, 134 U. S. 547, 557; *California* v. *San Pablo Railroad*, 149 U. S. 308, 314; *Richardson* v. *McChesney*, 218 U. S. 487, 492; *Missouri, Kansas & Texas Ry.* v. *Cade*, 233 U. S. 642, 648. (Id. 77–78.)

To the same effect, see also *State of Oklahoma* v. *A., T. & S. F. Ry. Co.*, 220 U. S. 277, and *State of Oklahoma* v. *G., C. & S. F. Ry. Co.*, 220 U. S. 290.

II.

There is no Equity in the Bill of Complaint.

In this connection we will summarize provisions of the transportation act complained of, in so far as they relate to matters over which the Commission exercises jurisdiction.

Paragraphs (18) to (22) of section 402 of the transportation act, referred to in Paragraph XV of the bill, amend the interstate commerce act and are paragraphs (18) to (22) of section 1 of the latter act.

In paragraph (18) it is provided: That no carrier by railroad subject to the interstate commerce act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under the interstate commerce act over or by means of such additional or extended line of railroad, unless and until it shall have obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and that no such carrier shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until it shall have obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

Paragraph (19) authorizes the Commission to make and put in force rules and regulations pertaining to such applications and the issuance of such certificates and prescribes otherwise the method of procedure to be followed by the Commission in the premises, including in each instance a hearing after notice to the governor of each State in which the railroads involved are proposed to be constructed, operated or abandoned, and the publication of said notice.

In paragraph (20) it is provided: That the Commission may grant the application in whole or in part, and attach to the issuance of the certificate

such terms and conditions as in its judgment the public convenience and necessity may require; that the carrier to whom the certificate is issued may take action in accordance with the terms thereof; that any construction, operation, or abandonment contrary to the provisions of paragraph (18) or paragraph (19) may be enjoined by a court of competent jurisdiction at the suit of the United States or the Commission, or any commission or regulating body of the State or States affected, or any party in interest, and that any violation of paragraph (18) or paragraph (20) may be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

In paragraph (21) it is provided: That the Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to the interstate commerce act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in the latter act, and to extend its line of railroad; that no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public, and that any carrier subject to the interstate commerce act which refuses or neglects to comply with such an

order shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

By paragraph (22) there are excepted from the jurisdiction conferred upon the Commission by paragraphs (18) to (21) spur, industrial, team, switching or side tracks, located or to be located wholly within one State, and street, suburban and interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

Section 407 of the transportation act, referred to in Paragraph XVI of the bill, amends section 5 of the interstate commerce act, and, of the latter section,

Paragraph (1) provides: That it shall be unlawful for any carrier subject to the interstate commerce act to enter into any contract, agreement, or combination with any other carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof, and that, after hearing upon an application of any such carrier, or upon its own initiative, the Commission may permit such division of traffic or earnings to the extent indicated by it, if it is of opinion that the division will be in the interest of better service to the public, or economy in operation, and not unduly in restraint of competition, if such division is assented to by all the carriers involved, under such rules and regulations, and for such consideration as between such carriers and upon

such terms and conditions, as the Commission shall find to be just and reasonable.

Paragraph (2) provides: That, after hearing, upon the application of any such carrier or carriers, the Commission may authorize the acquisition, to the extent indicated by it, by one of such carriers of the control of any other such carrier or carriers, either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, if the Commission is of opinion that such control will be in the public interest, under such rules and regulations and for such consideration and on such terms and conditions as the Commission shall find to be just and reasonable.

Paragraph (3) provides: That the Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or paragraph (2) as it may deem necessary or appropriate.

Paragraph (4) provides: That the Commission shall prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems; that in doing so it shall preserve competition as fully as possible, and, wherever practicable, provide for the maintenance of existing routes and channels of trade and commerce, and that in preparing such plan the Commission shall so arrange that the cost of transportation as between competitive systems and as related to the values of the properties through

which the service is rendered shall be the same, as far as practicable, in order that the systems may employ uniform rates in the movement of competitive traffic and, under efficient management, earn substantially the same rate of return upon the value of their respective railway properties.

Paragraph (5) provides: That, when the Commission has agreed upon a tentative plan for such consolidation of railway properties, it shall give the same due publicity and, upon reasonable notice, including notice to the governor of each State, shall hear all persons who may file or present objections thereto; that the Commission may prescribe the procedure for such hearings; that, after the hearings have been completed, the Commission shall adopt a plan for such consolidation and publish the same; that thereafter, upon its own motion or upon application, the Commission may reopen the subject for such changes or modifications as in its judgment will promote the public interest, and that the consolidations provided for shall be in harmony with the plan to be prepared by the Commission.

Paragraph (6) provides: That two or more carriers by railroad subject to the interstate commerce act may consolidate their properties or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, if the consolidation is in harmony with the plan prepared and adopted by the Commission and is approved by the Commission, and the bonds at par of the corporation

which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, do not exceed the value of the consolidated properties as determined by the Commission. Subdivision (c) of this paragraph authorizes the Commission, upon application, to grant permission to two or more carriers to consolidate their properties, after it has given due notice to the governor of each State in which any part of the properties is situated and to the carriers involved and held a public hearing, if it finds that the public interest will be promoted by the consolidation and that the conditions of said section 5 have been or will be fulfilled. This subdivision also provides that the order of the Commission permitting such consolidation may include such modifications and terms and conditions as the Commission may prescribe, and that thereupon the consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Paragraph (7) provides: That the power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company if application for such authority is made to the Commission within 30 days after the passage of the transportation act.

Paragraph (8) provides: That the carriers affected by any order made under said section 5 and any corporation organized to effect a consolidation approved and authorized in such order shall be relieved from the operation of the antitrust laws as designated in the Clayton antitrust act, approved October 15, 1914, and of all other restraints or prohibitions of law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the provisions of said section 5.

Section 439 of the transportation act, mentioned in Paragraph XVII of the bill, is section 20a of the interstate commerce act, and, of the latter section,

Paragraph (1) provides: That as used in this section the term carrier means a carrier by railroad subject to the interstate commerce act, or any corporation organized for the purpose of engaging in transportation by railroad subject to said act, except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.

Paragraph (2) contains provisions prohibiting a carrier from issuing securities, or assuming obligations or liabilities as lessor, lessee, guarantor, endorser, surety, or otherwise, even though permitted to do so by the authority which created it, except after having obtained the authority of the Commission in the premises, and prescribes the conditions under which the Commission may grant such authority. This paragraph also prohibits the Commission from making an order

granting such authority unless it finds as to such issue or assumption: That it is for some lawful object within the corporate purposes of the carrier; that it is compatible with the public interest; that it is necessary or appropriate for and consistent with the proper performance by the carrier of service to the public as a common carrier; that it will not impair the carrier's ability to perform that service, and that it is reasonably necessary and appropriate for such purpose.

Paragraph (3) authorizes the Commission, subject to the requirements of paragraph (2), to exercise its discretion and to modify its orders from time to time, in the premises.

Paragraph (4) contains provisions relating to the form and contents of applications to be made to the Commission by the carriers.

Paragraph (5) provides: That carriers shall give notice to the Commission, in accordance with the Commission's requirements, concerning the selling, pledging, repledging, or otherwise of securities.

Paragraph (6) requires the Commission, where such an application is made by a carrier, to give notice thereof to, and file a copy of the notice with, the governor of each State in which the applicant carrier operates, and provides for the hearing by the Commission of parties in opposition to favorable action upon the application.

Paragraph (7) authorizes carriers to issue securities and assume obligations or liabilities without obtaining authority other than that of the Commission.

Paragraph (8) provides: That nothing in said section 20a shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

Paragraph (9) authorizes a carrier, without the consent of the Commission, to issue notes maturing within two years from their respective dates which shall not at any time exceed in the aggregate five per cent of the value of the securities of the carrier outstanding, and requires the carrier to notify the Commission, in such form as the Commission may prescribe, of the issuance of such notes, within ten days from the respective dates of issue. This paragraph also provides that in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

Paragraph (10) provides: That the Commission shall require periodical or special reports from each carrier, of securities, including such notes, which shall show in such detail as the Commission may prescribe the disposition to be made of the securities and the application of the proceeds thereof.

Paragraph (11) makes void any securities issued and any obligation or liability assumed by a carrier without such authority from the Commission, but provides that no such security, obligation, or liability shall be made void by any matter which precedes the Commission's order of authorization. This section further provides that a person who invests money in a security, obligation, or liability, so made void, in good faith and without notice of the inva-

lidity, may hold jointly and severally liable and collect the full amount of damages from the carrier and its directors, officers, attorneys, and other agents, involved; that where a person purchases such a security directly from the carrier issuing it he may rescind the transaction and upon the surrender of the security recover the consideration given by him therefor, and that for each violation of any of said provisions of the section a fine of not less than $1,000 nor more than $10,000, or imprisonment for not less than one year nor more than three years, or both, shall be the penalty.

Paragraph (12) prohibits any person, after December 31, 1921, from holding the position of officer or director of more than one carrier, unless authorized to do so by the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby, and makes it unlawful for any officer or director of a carrier to derive benefit from securities issued or to be issued by the carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account and, for a violation of any provision of this paragraph, provides a penalty of not less than $1,000 nor more than $10,000 fine, or imprisonment for not less than one year, nor more than three years, or both.

Section 422 of the transportation act, mentioned in Paragraph XVIII of the bill, is section 15a of the interstate commerce act, and, of the latter section,

Paragraph (1) provides: That, as used in the section, the word "rates" means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto, the word "carrier" means a carrier by railroad or partly by railroad and partly by water, subject to the interstate commerce act, and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents, except that sleeping car companies and express companies, street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight, and any belt-line railroad, terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or political subdivision thereof, is not included in said section.

Paragraph (2) requires the Commission to make rates which will yield to the carriers as a whole, or as a whole in each group or territory designated by the Commission, a fair return, as nearly as may be, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, upon the aggregate value

of the property used by the carriers in serving the public, except that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Paragraph (3) requires the Commission to determine and make public from time to time such fair return, but for the two years beginning March 1, 1920, limits the return to 5½ per cent upon such aggregate value, except that it authorizes the Commission to add one-half of 1 per cent to make provision in whole or in part for improvements, betterments, or equipment. This paragraph also requires the Commission, in making such determination, to give due consideration, among other things, to the transportation needs of the country and the necessity, under honest, efficient, and economical management of existing transportation facilities, of enlarging such facilities in order to provide the people of the United States with adequate transportation.

Paragraph (4) requires the Commission, from time to time, as may be necessary, to fix such aggregate value, and, in doing so, to give due consideration to all elements of value for rate-making purposes recognized by law. This paragraph further provides that when the Commission fixes a value for the property of any carrier under section 19a of the interstate commerce act that shall be the value used by the Commission in determining such aggregate value.

Paragraph (5) contains a declaration that it is impossible, without regulation and control in the interest of the commerce of the United States considered as a whole, to establish uniform rates upon competitive traffic which shall adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, and provides that, for this reason, any carrier which receives such an income so in excess of a fair return shall hold the portion of the excess mentioned in paragraph (6) for, and pay it to, the United States.

Paragraph (6) provides: That one-half of such excess shall be placed in a reserve fund to be established and maintained by the carrier; that the other one-half shall be paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund; that, in each instance, the value used in this connection shall be the value of all the property operated as a single system, regardless of separate ownership of, or separate accounting returns for, various parts of the system. This paragraph further provides that, where a carrier accepts the provisions of section 209 of the transportation act, said paragraph (6) shall not be applicable to income for any period prior to September 1, 1920.

Paragraph (7) authorizes a carrier to use the reserve fund to pay interest on stocks, bonds, or other securities, or to pay rent for leased roads, where the carrier's net railway operating income for any year is less than said 6 per cent, but prohibits the use of such fund for any other purpose.

Paragraph (8) authorizes a carrier to use, for any lawful purpose, its income in excess of a reserve fund of 5 per cent of the value of its property used in serving the public.

Paragraph (9) requires the Commission to prescribe rules and regulations for the determination and recovery of excess income payable to it by carriers, and authorizes the Commission to require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. This paragraph also requires the Commission to make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective.

Paragraph (10) makes the general railroad contingent fund a revolving fund to be administered by the Commission and authorizes the Commission, in furtherance of the public interest in railway transportation, to make loans to carriers and purchase transportation equipment and facilities. This paragraph further provides that any moneys in the fund not so employed shall be invested in obligations of the

United States or deposited in authorized depositaries of the United States.

Paragraph (11) authorizes carriers to make applications to the Commission for loans, makes certain requirements concerning the contents of such applications, and authorizes the Commission to make other requirements in this connection.

Paragraph (12) authorizes the Commission to make such a loan if the Commission finds the loan is necessary to enable the applicant properly to meet the transportation needs of the public and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and meet its other obligations in connection with the loan. This paragraph also provides that the Commission shall prescribe adequate security and that the rate of interest to be paid by the carrier shall be 6 per cent per annum and payable semiannually.

Paragraph (13) authorizes carriers to make applications to the Commission for leases of equipment or facilities purchased by the Commission under authority conferred upon it as aforesaid, makes certain requirements concerning the contents of said applications, and authorizes the Commission to make other requirements in the premises.

Paragraph (14) authorizes the Commission to make such a lease if it finds the lease necessary to enable the applicant properly to meet the transportation

needs of the public, and that the prospective earning power of the applicant is such as to furnish reasonable assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under the lease. This paragraph also provides: That the Commission may fix the time the lease is to be in force and the terms and conditions of the lease, and that the rental charges provided for shall be at least sufficient to pay a return of 6 per cent per annum, plus an allowance for depreciation to be determined as provided in paragraph (5) of section 20 of the interstate commerce act, upon the value of the equipment or facilities leased.

Paragraph (15) authorizes the Commission to acquire, maintain, replace, and sell, such equipment and facilities, and to carry out contracts in connection therewith, to the extent that moneys in said fund will permit.

Paragraph (16) authorizes the Commission to prescribe rules and regulations pertaining to said loans and leases.

Paragraph (17) provides: That the provisions of said section 15a shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, and also provides that no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of said section.

Paragraph (18) authorizes the Commission to permit a carrier, or a corporation organized to construct and operate a railroad, to retain such excess income on a new line for a period not greater than ten years, upon condition that the construction of the line shall be completed within a period to be designated by the Commission.

Section 416 of the transportation act, mentioned in Paragraph XIX of the bill, amends section 13 of the interstate commerce act by adding thereto paragraphs (3) and (4).

Paragraph (3) authorizes carriers to file petitions before the Commission bringing in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by the authority of a State, or initiated by the President during the period of Federal control, and requires the Commission, when such an issue is made before it in any investigation under the provisions of the interstate commerce act or in any investigation instituted upon the petition of a carrier, to cause the State or States interested to be notified of the proceeding. This paragraph also authorizes the Commission to confer and hold joint hearings with, and to avail itself of the cooperation, services, records, and facilities of, such State authorities, in the enforcement of any provision of said act, where the rate-making authority of a State is or may be affected by the action which may be taken by the Commission.

Paragraph (4) provides: That, "whenever in any such investigation the Commission, after full hearing,

finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination," and that "such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 418 of the transportation act, mentioned in Paragraph XIX of the bill, amends section 15 of the interstate commerce act, and the portion of said section 15 complained of is paragraph (1), which reads:

> That whenever, after full hearing, upon a complaint made as provided in section 13 of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or with-

out any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this act for the transportation of persons or property or for the transmission of messages as defined in the first section of this act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed,

> or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Complainant's contention that the provisions of the transportation act and of the interstate commerce act, complained of by it, are unconstitutional appears to us to be based upon the view that such provisions can not reasonably be so construed as to avoid unauthorized interference with complainant's sovereign right to regulate the business of common carriers within the State of Texas in commerce which is *purely* intrastate, but we think this view is erroneous. We believe the court will experience no difficulty in determining that in the action taken by it Congress manifested no disposition to interfere with or regulate, or to authorize the Commission to interfere with or regulate, any commerce which is purely intrastate. It will be observed that in each instance the provisions are applied only to interstate carriers and to the business done by them as common carriers in interstate and foreign commerce. The authority over intrastate commerce conferred upon the Commission is only incidental to the duties imposed and the authority conferred upon it in connection with the regulation of interstate and foreign commerce, and neither authorizes nor requires the interference mentioned. In each instance Congress has prescribed rules by which the Commission is to be guided in reaching conclusions concerning the matters

it is required to pass upon and determine, and has required the Commission to issue notices, make investigations, accord to interested parties a full and fair opportunity to be heard, and to take such other action in the premises as may be necessary to satisfy the requirements of due process of law.

In connection with the authority conferred upon the Commission by paragraphs (18) to (20) of section 1 of the interstate commerce act, which relate to the construction, acquisition, operation, and abandonment of lines of railroad, the Commission is required to issue notices and hold hearings, and may not properly issue the certificates referred to unless it finds that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, and that the present or future public convenience and necessity permit of the abandonment.

By paragraph (21) of said section, which relates to the providing by carriers of full and adequate facilities, the Commission is required to hold a hearing, and may not properly grant the permission, or make the requirement, referred to, unless it finds that the extension involved is reasonably required in the interest of the public convenience and necessity and that the expense involved in providing the extensions or facilities will not impair the ability of the carrier to perform its duties to the public.

By paragraph (1) of section 5 of said act, which relates to the divisions of traffic and earnings of carriers, the Commission is required to hold a hear-

ing, and may not properly authorize the divisions unless it finds that they will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition.

By paragraph (2) of said section 5, which relates to the acquisition of control by one carrier over another carrier, short of consolidation, the Commission is required to hold a hearing, and may not properly authorize the acquisition unless it finds it will be in the interests of the public.

By paragraphs (4) and (5) of said section 5, which relate to the preparation and adoption by the Commission of a plan for the consolidation of railway properties, the Commission is required to issue notices and hold hearings, and may not publish a complete plan which does not preserve competition as fully as possible and, wherever practicable, preserve also existing routes and channels of trade and commerce.

By paragraphs (6) and (7) of said section 5, which relate to the consolidation by carriers of their properties, the Commission is required to issue notices and hold hearings, and may not properly authorize the consolidations unless it finds that the public interest will be promoted thereby and that the conditions of said section have been or will be fulfilled. Some of the conditions are: That the consolidation shall be in harmony with and in furtherance of said complete plan and approved by the Commission, and that the bonds at par of the corporation which is to become the owner of the consolidated proper-

ties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission.

By paragraph (8) of said section 5 carriers are relieved of the operation of the antitrust laws as designated in the Clayton Act of October 15, 1914, and of other restraints or prohibitions, only to the extent that such relief may be necessary to enable the carriers to do anything authorized or required by any order made by the Commission under prior provisions of said section.

By paragraphs (1) to (11) of section 20a of said act, which relate to the issuance of securities and the assumption of liabilities by carriers, the Commission is required to give notice to the governor of each State in which the carrier applying for authority to issue securities or assume liabilities operates, and accord an opportunity to be heard in the premises to the railroad commission, public service or utilities commission, or other appropriate State authority.

By paragraph (12) of said section 20a, which relates to the holding by one person of the position of officer or director of more than one carrier, the Commission may not authorize such holding unless it finds that neither public nor private interests will be adversely affected thereby.

By paragraph (2) of section 15a of said act, which must be read in connection with paragraph (1) of section 15 of said act, the Commission is required to hold hearings and to determine the reasonable-

ness of rates in accordance with the rules prescribed in said paragraph (2).

By paragraph (3) of said section 15a, which relates to the determination by the Commission of the amount of a fair return to the carriers, the Commission is required to give due consideration, among other things, to the transportation needs of the country and the necessity, under honest, efficient, and economical management of existing transportation facilities, of enlarging such facilities in order to provide the people of the United States with adequate transportation.

By paragraph (4) of said section 15a, which relates to the determination by the Commission of the aggregate value of the properties of carriers, the Commission is to determine the value in accordance with rules prescribed by Congress and contained in section 19a of said act.

By paragraph (10) of said section 15a, the manner in which and the purposes for which the railroad contingent fund referred to is to be used by the Commission are described, and the Commission may not properly make loans to carriers from said fund unless it finds certain facts specified in paragraph (12) of said section.

By paragraph (14) of said section 15a, the Commission is required to make certain findings of fact before it may properly exercise the authority conferred upon it to lease to carriers equipment or facilities purchased by the Commission with moneys taken from the contingent fund.

By paragraph (18) of said section 15a, which authorizes the Commission to grant permission to a carrier to retain for a period not exceeding ten years excess earnings derived from new construction, it is provided that the permission shall not be granted except upon condition that the construction shall be completed within a period of time which must be fixed by the Commission.

By paragraph (4) of section 13 of said act, the Commission is required to hold hearings, and to find that the intrastate rates, fares, charges, classifications, regulations, or practices, referred to, cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or undue, unreasonable, or unjust discrimination against interstate or foreign commerce, before it can require any of said intrastate rates, fares, charges, classifications, regulations, or practices to be changed.

Because of the conclusions contained in the bill we have deemed it necessary to analyze closely the provisions of law complained of. In Paragraph XXI complainant appears to have summarized and set forth in concise form the reasons advanced by it in support of its contention that said provisions are unconstitutional. Its first contention is that, under authority and direction of the transportation act, the Commission has fixed fares and charges for the transportation of passengers and freight which are unjust and unreasonable, but whether fares or charges

are unjust or unreasonable are questions, not of law, but of fact, to be determined by Congress, in so far as they relate to interstate or foreign commerce, or to be determined by the Commission under rules prescribed for its guidance by Congress; and the Commission's findings of fact in this connection are binding upon all parties, including the courts, in the absence of a showing that in making them the Commission has acted beyond the power duly conferred upon it. In *Procter & Gamble Company* v. *United States, Interstate Commerce Commission, et al.*, 225 U. S. 282, this court said:

> Originally the duty of the courts to determine whether an order of the Commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of orders of the Commission, for the purpose of enforcing or restraining their enforcement, the courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may be not technically doing so. * * * (Id. 297–298.)

To the same effect, see also *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western Railroad Company*, 220 U. S. 235, 251–252, and

United States v. *Louisville & Nashville Railroad Company*, 235 U. S. 314, 320.

Complainant further contends that, acting under the aforesaid direction and authority, the Commission, regardless of and in conflict with the constitution and laws of the State of Texas has granted and refused to grant, to carriers, certificates of public convenience and necessity relating to the construction, acquisition, operation and abandonment of lines of railroad, but it will be observed that the carriers referred to are all engaged in interstate commerce, and it is obvious, we think, that the rules under which the Commission acted were prescribed by Congress for the purpose of fostering and protecting such commerce and to provide uniformity in the regulation thereto pertaining.

We make a similar reply to complainant's contention, that the Commission is attempting to supervise and regulate the issuance of bonds, certificates and other securities by the railroads of the State of Texas, which were issued in accordance with the constitution and laws of that State.

Complainant further contends that by placing the railroads of the State of Texas in what is designated as the "western freight group," in accordance with authority conferred upon it by the transportation act, the Commission has rendered it necessary for said railroads to pay more than their just share upon property within the State to supply the operating income demanded by the railroads of the United States, in violation of the statutes and constitution

of the State of Texas and in violation of the Constitution of the United States. We think it is obvious, however, that the action of Congress here complained of was taken for the purpose of promoting, fostering and protecting interstate and foreign commerce, and is therefore within the authority of Congress. It is apparent that unless Congress may provide such regulation for interstate carriers as will enable them to secure a fair return on the aggregate value of the property used by them in serving the general public, it can not properly promote, foster or protect interstate and foreign commerce; and it is also apparent, we think, that if common carriers of intrastate traffic within the State of Texas were compelled to rely entirely upon such traffic for the return mentioned their fares and charges for the transportation of that traffic would necessarily be much greater than they are at the present time.

Complainant further contends that regardless of and in conflict with the constitution and the laws of the State of Texas the Commission, under the authority conferred upon it by the transportation act, intends to authorize the creation and operation of trusts, combinations and monopolies among railroads in that State, but we have seen that the authority referred to may not properly be exercised by the Commission unless it finds that such exercise will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition.

Finally, complainant contends that the necessary effect of the provisions of law complained of is to provide for the determination by Congress, and its agent, the Commission, of justiciable questions which may properly be determined only by this court. We have shown, however, that the questions referred to are not judicial but are instead legislative in character, and that to the extent the Commission has been authorized and required to determine them Congress has prescribed the rules by which the Commission is to be guided.

In our opinion, each of and all complainant's contentions were answered in the negative by the decision of this court in *Houston, East and West Texas Railway Company* v. *United States*, 234 U. S. 342, commonly called the "*Shreveport Case*", from which we quote as follows:

> It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several States. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation and to provide the necessary basis of national unity by insuring "uniformity of regulation against conflicting and discriminating State legislation."

By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. *Gibbons* v. *Ogden*, 9 Wheat. 1, 196, 224; *Brown* v. *Maryland*, 12 Wheat. 419, 446; *County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697; *Smith* v. *Alabama*, 124 U. S. 45, [465], 473; *Second Employers' Liability Cases*, 223 U. S. 1, 47, 53, 54; *Minnesota Rate Cases*, 230 U. S. 352, 398, 399.

Congress is empowered to regulate—that is, to provide the law for the government of interstate commerce; to enact "all appropriate legislation" for its "protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v. *Kimball*, *supra*); "to foster, protect, control and restrain" (*Second Employers' Liability Cases*, *supra*). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hin-

> drance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. *Baltimore & Ohio Railroad Co.* v. *Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Railway Co.* v. *United States*, 222 U. S. 20, 26, 27; *Second Employers' Liability Cases*, *supra*, pp. 48, 51; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 205, 213; *Minnesota Rate Cases*, *supra*, p. 431; *Illinois Central Railroad Co.* v. *Behrens*, 233 U. S. 473. (Id. 350–352.)

At the time matters covered by the transportation act were being discussed, Congress was confronted with the necessity of preserving and strengthening

the interstate common carriers of the country, and making them efficient and serviceable agencies for the transportation of interstate and foreign commerce, and also for the transportation of intrastate commerce. After several months of discussion, deliberation and reflection, Congress perfected and put into operation the plan now under consideration, and in doing so we think it did not exceed the power conferred upon it by the Constitution of the United States.

In *McCulloch* v. *Maryland*, 4 Wheat. 316, this court said:

> * * * Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. (Id. 420.)

We believe it can not be consistently contended that the end Congress had in view was not legitimate or within the scope of the Constitution, and we are equally convinced that the means it adopted and put in force are appropriate and plainly adapted to that end.

For the reasons above set forth we insist that the petition in this case should be dismissed.

Respectfully submitted.

P. J. FARRELL,
Counsel for Interstate Commerce Commission, Defendant.

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Office Supreme Court, U
FILED
OCT 8 1921
JAMES D. MAHE

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

IN EQUITY. ORIGINAL NO. 24.

STATE OF TEXAS, COMPLAINANT,

v.

THE INTERSTATE COMMERCE COMMISSION AND THE RAILROAD LABOR BOARD, DEFENDANTS.

MOTION TO DISMISS.

P. J. FARRELL,
For Interstate Commerce Commission, Defendant.

OCTOBER, 1921.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1921

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

IN EQUITY. ORIGINAL NO. 24.

STATE OF TEXAS, COMPLAINANT,

v.

THE INTERSTATE COMMERCE COMMISSION AND THE Railroad Labor Board, defendants.

MOTION TO DISMISS.

Now comes the Interstate Commerce Commission, one of the defendants in the above-entitled suit, and moves the court to dismiss the bill of complaint in said suit upon the grounds that—

1. The bill of complaint does not present for determination a case or controversy within the original jurisdiction of the court.

2. There is no equity in the bill of complaint.

P. J. FARRELL,

For Interstate Commerce Commission,

Defendant.

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STATE OF TEXAS *v.* INTERSTATE COMMERCE COMMISSION AND RAILROAD LABOR BOARD.

IN EQUITY.

No. 24, Original. Argued on motions to dismiss December 7, 8, 1921.—Decided March 6, 1922.

1. Regarded as corporate entities created for governmental purposes, the Interstate Commerce Commission and the Railroad Labor Board are not citizens of any State. P. 160.
2. Abstract questions of the power of Congress to enact specified legislation do not present a case or controversy within the judicial power as defined by the Constitution. P. 162.
3. A suit by a State against the Railroad Labor Board and the Interstate Commerce Commission, seeking to annul action taken by them under the Transportation Act of 1920, as an unconstitutional invasion of the rights of the State, injurious to her citizens, *held* not to be entertained by this court in the exercise of its original jurisdiction where the decisions and orders complained of had been put in execution and their annulment would directly and unavoidably affect resulting interests of carriers and carrier employees who were not parties or represented in the litigation. P. 163.
4. That the citizenship of such necessary parties prevents their being joined will not justify proceeding in their absence. P. 163.
5. A suit by a State to set aside orders of the Interstate Commerce Commission must be brought in the District Court and the United States must be made a defendant. P. 164. *North Dakota* v. *Chicago & Northwestern Ry. Co.*, 257 U. S. 485.

Bill dismissed.

On motions to dismiss an original bill in this court, brought by the State of Texas against the Interstate Commerce Commission and the Railroad Labor Board, and seeking to have declared unconstitutional certain portions of the Transportation Act of 1920, to annul all action taken thereunder by either defendant in respect of railroad carriers in Texas, and to restrain the defendants from taking any further action thereunder in respect of those carriers.

Mr. Tom L. Beauchamp, with whom *Mr. C. M. Cureton*, Attorney General of the State of Texas, *Mr. W. A. Keeling*, *Mr. Walace Hawkins* and *Mr. John E. Benton* were on the brief, for complainant.

Mr. Solicitor General Beck, with whom *Mr. Robert P. Reeder* was on the brief, for the Railroad Labor Board.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Alfred P. Thom, for the Association of Railway Executives, as *amicus curiae*, by special leave of court.

Mr. N. A. Stedman, *Mr. E. B. Perkins* and *Mr. Daniel Upthegrove*, by leave of court, filed a brief on behalf of the St. Louis Southwestern Railway Company, as *amici curiae*.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is a bill in equity brought in this court by the State of Texas against the Interstate Commerce Commission and the Railroad Labor Board. The relief sought is, first, a declaration that the main provisions [1] of Titles III and IV of the Transportation Act of 1920, c. 91, 41 Stat. 456, 469, 474, are unconstitutional and void,

[1] Particularly §§ 300–316, subdivisions 18–22 of § 402, §§ 407 and 416, subdivison 1 of § 418, and §§ 422 and 439.

secondly, an annulment of all action heretofore taken thereunder, by either defendant, in respect of railroad carriers in Texas, and, thirdly, an injunction restraining the defendants from taking any further action thereunder in respect of those carriers. The right of the State to bring the suit, our power to entertain it and the merits of the case made by the bill are all challenged by motions to dismiss.

In the bill and supporting brief the defendants are spoken of as citizens of States other than Texas and this is treated as bringing the suit within our original jurisdiction. But both defendants are sued as corporate entities created by the United States for governmental purposes; and, if that be their status,[2] they are not citizens of any State,[3] but have the same relation to one State as to another. So, to entertain the suit we should have to find some ground of jurisdiction other than the one suggested. But we need not stop to consider the possible grounds whereon a State may invoke our original jurisdiction, because an examination of the bill discloses insuperable obstacles to our entertaining it on any ground.

The provisions of Titles III and IV which are drawn in question are all in terms confined to matters pertaining to railroad carriers engaged in interstate or foreign commerce, and evidently were enacted in what Congress regarded as an exercise of its power to regulate such commerce.

Those relating to the Railroad Labor Board—they are in Title III—may be summarized as clothing the Board with authority to entertain and decide disputes between carriers and their employees in respect of wages, grievances, rules or working conditions; as directing that all parties to such a dispute be accorded a hearing either in

[2] See *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 203–204.

[3] *Bankers Trust Co.* v. *Texas & Pacific Ry. Co.*, 241 U. S. 295, 309.

person or by counsel, and as requiring that the decisions be entered in an appropriate record and that they and all violations of them be given such publicity as the Board may indicate.

The provisions relating to the Interstate Commerce Commission—these are in Title IV—may be summarized as investing the Commission with a substantial measure of control or supervision over interstate rates and fares; over the removal of any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce on the one hand and in interstate commerce on the other, arising from intrastate rates and fares; over the removal of any undue, unreasonable or unjust discrimination against interstate commerce caused by intrastate rates and fares; over the division of the carriers of the country into territorial groups for valuation and rate making purposes; over what shall be regarded as a fair return on the aggregate value of the property of the carriers in each group; over the maintenance and use of certain reserve and contingent funds to be set apart from any revenues in excess of such fair return; over the construction and acquisition of new lines and the extension and abandonment of old ones; over the pooling of traffic or earnings; over the consolidation of carriers; over the issue of stocks, bonds and other securities by carriers, and over making the same person a director or officer of more than one carrier. These provisions contemplate and require in respect of most of the matters recited that the State wherein the carrier's line lies shall be notified and accorded a hearing before a finding or order is made by the Commission.

Other statutes prescribe that orders of the Commission, other than for the payment of money as reparation, may be enforced in the district courts at the suit of the United States, or may be annulled, set aside or suspended in the district courts at the suit of any aggrieved party

in interest, but that all suits of the latter class shall be brought against the United States as the principal defendant.

The bill is of unusual length, sixty-five printed pages. Much of it is devoted to the presentation of an abstract question of legislative power—whether the matters dealt with in several of the provisions of Titles III and IV fall within the field wherein Congress may speak with constitutional authority, or within the field reserved to the several States. The claim of the State, elaborately set forth, is that they fall within the latter field, and therefore that the congressional enactment is void. Obviously, this part of the bill does not present a case or controversy within the range of the judicial power as defined by the Constitution. It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and determined by an exertion of the judicial power. *Georgia* v. *Stanton*, 6 Wall. 50, 73, *et seq.*; *Muskrat* v. *United States*, 219 U. S. 346, 361; *Stearns* v. *Wood*, 236 U. S. 75, 78.

The portion of the bill particularly directed against the action of the Railroad Labor Board alleges, in effect, that the Board, proceeding under Title III, has heard and decided divers disputes over working conditions and wages between carriers in Texas and their employees; that conformably to these decisions the working conditions have been changed and the wages of the employees materially raised; and that as a result the operating expense of the carriers has been greatly increased, necessity for a larger operating income has arisen, rates and fares have been raised accordingly, and producers, shippers and consumers have been and are being injuriously affected.

Even if these allegations, in connection with other parts of the bill, could be regarded as presenting a concrete

controversy turning on the validity of Title III, this would not enable us to entertain the suit. The bill makes it plain that the carriers and employees have put the Board's decisions into effect and have adjusted their relations on that basis. There are none to whom the controversy would be of such immediate concern as to them; and, should it be resolved against the validity of Title III and the Board's action annulled, their interests would be directly and unavoidably affected. They are not parties to the bill; nor do any of those who are parties represent them. The Board does not claim to do so; and the attitude of the State is antagonistic to them. To take up and solve the controversy without their presence and without their being represented would be quite inadmissible, considering the exceptional nature of our original jurisdiction. *California* v. *Southern Pacific Co.*, 157 U. S. 229, 257; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 245. If their citizenship be such that they cannot be brought into the suit consistently with the limitations on our original jurisdiction, this does not justify us in proceeding in their absence. The cases just cited leave no doubt on this point.

The portion of the bill particularly directed against the action of the Interstate Commerce Commission charges, in substance, that the Commission, proceeding under Title IV, has placed the carriers of Texas in a territorial rate group with carriers of other States where railroad construction and operation are attended with greater cost, has approved a general increase in the interstate rates and fares of carriers in that group, has directed a corresponding increase in the intrastate rates and fares of carriers in Texas, has authorized the abandonment by certain carriers of their lines within the State, and has exercised a supervision over the issue of stocks, bonds and other securities by carriers chartered by the State;—all of which orders, it is alleged, impinge on the powers

reserved to the State and subject its citizens to unnecessary expense and great inconvenience.

If the State have a right to sue to annul these orders, a familiar rule requires that it shall proceed with due regard for the rights of the carriers who have put the orders into effect and are conforming to them. On the question whether the orders are invalid and should be annulled, or are valid and should be upheld, the carriers are entitled to be heard. Their interests are directly involved and will be necessarily affected by the outcome. They are not parties to the bill, and as to all but one the bill makes it clear that their citizenship is an obstacle to making them such. This, without more, would preclude us from awarding any relief on this portion of the bill. *California* v. *Southern Pacific Co., supra; Minnesota* v. *Northern Securities Co., supra.* Besides, there are statutory provisions, before noticed, which direct that all suits to set aside, annul or suspend orders of the Commission be brought in the District Courts and the United States made a defendant. Jud. Code, §§ 207, 208, 211; Act of October 22, 1913, c. 32, 38 Stat. 219–220. These provisions were recently considered by us in a related case and it was there held that the public policy which they reflect requires that a State aggrieved by such an order be remitted to the remedy which they afford—a suit in the District Court in which the United States is made a party. *North Dakota* v. *Chicago & Northwestern Ry. Co.*, 257 U. S. 485.

Some emphasis is laid on two statements in the bill—one that the State owns an intrastate railroad 33.55 miles in length and operates the same as a common carrier, and the other that it is a shipper of freight and user of passenger transportation over other lines in both interstate and intrastate commerce. Apparently the only purpose of these statements is to show that the State has such an interest as entitles it to call in question the orders of the Commission dealing with rates and fares. At all events,

the bill does not connect them with any of the other questions sought to be presented or predicate any other claim to relief on them. They therefore are covered by the ruling that suits to set aside, annul or suspend the Commission's orders should be brought in the District Courts where all proper parties, including the United States, may be made defendants and accorded an appropriate hearing.

What has been said suffices to show that we are not at liberty to entertain the bill in the exercise of our limited original jurisdiction.

In passing it should be observed that some of the provisions of the Transportation Act, assailed by the bill, have recently been upheld in other cases brought before us in regular course on appeal from decrees in the District Courts. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New York* v. *United States*, 257 U. S. 591.

Bill dismissed.